

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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Miller Building
Des Moines, IA 50319
Telephone: (515)281-6766

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC
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441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
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441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication
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Schedule for Rule Making 2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
Oct. 6	Oct. 25	Nov. 14	Nov. 29	Dec. 1	Dec. 20	Jan. 24 '07	Apr. 23 '07
Oct. 20	Nov. 8	Nov. 28	Dec. 13	***Dec. 13***	Jan. 3 '07	Feb. 7 '07	May 7 '07
Nov. 3	Nov. 22	Dec. 12	Dec. 27	***Dec. 27***	Jan. 17 '07	Feb. 21 '07	May 21 '07
Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan. 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

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SUBMISSION DEADLINE

Friday, December 30, 2005

Friday, January 13, 2006

Friday, January 27, 2006

ISSUE DATE

January 18, 2006

February 1, 2006

February 15, 2006

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

Note change of filing deadline

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

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The Administrative Rules Review Committee will hold a its regular, statutory meeting on Friday, January 6, 2006, at 9 a.m. in Room 24, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Payroll deduction for additional insurance coverage, 46.6, 46.11, 46.14, Filed **ARC 4748B** 12/21/05
 Pay for increased credentials, 53.9(6), Filed **ARC 4749B** 12/21/05
 Vehicle fueling; vehicle procurement; bulk diesel fuel procurement,
 103.16, 105.2, 105.11(6), 105.11(7), Filed **ARC 4747B** 12/21/05

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- Biologically based mental illness coverage, 35.3(3), 35.30, Filed **ARC 4720B** 12/7/05
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PUBLIC HEALTH DEPARTMENT[641]“umbrella”

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 Social work examiners, 283.5, Notice **ARC 4702B** 12/7/05
 Interpreter for the hearing impaired examiners, 361.5(2), 364.1, Filed **ARC 4756B** 12/21/05
 Interpreter for the hearing impaired examiners, adopt ch 362, Notice **ARC 4744B** 12/21/05
 Interpreter for the hearing impaired examiners, adopt ch 363, Notice **ARC 4745B** 12/21/05

PUBLIC HEALTH DEPARTMENT[641]

Volunteer health care provider program, 88.1, 88.3(1)“a,” 88.3(2)“c”(2), 88.5(1)“d”(15) to (20),
 88.6, 88.6(6), Notice **ARC 4701B** 12/7/05

PUBLIC SAFETY DEPARTMENT[661]

State building code, ch 16 title; rescind 16.1 to 16.600 and 16.700 to 16.802;
 adopt chs 300 to 303, Filed **ARC 4772B** 12/21/05
 Certification of automatic fire extinguishing system contractors, adopt ch 275, Notice **ARC 4753B** 12/21/05
 State historic building code, adopt ch 350, Filed **ARC 4773B** 12/21/05

RAILWAY FINANCE AUTHORITY[765]

TRANSPORTATION DEPARTMENT[761]“umbrella”

Railroad revolving loan and grant fund program, adopt ch 5, Filed **ARC 4705B** 12/7/05

REAL ESTATE COMMISSION[193E]

Professional Licensing and Regulation Division[193]

COMMERCE DEPARTMENT[181]“umbrella”

Disclosure of restrictive covenants, 14.1(6), Filed **ARC 4697B** 12/7/05

REVENUE DEPARTMENT[701]

Electronic transmission of returns; motor fuel and special fuel; underground storage tanks; tobacco tax retail permit,
 37.1, 67.1, 67.6, 68.2(1), 68.2(4), 68.2(5), 68.4(1), 68.8(2), 69.2, 83.12 to 83.17, Filed **ARC 4713B** 12/7/05
 Investment tax credits—new jobs and income program, new capital investment program, high quality job creation program,
 economic development region revolving fund, enterprise zone program, 42.2(10)“a” and “b,” 42.2(11)“d” and “e,”
 42.19, 42.27, 42.28, 52.10, 52.14, 52.22, 52.28, 52.29, 58.12, 58.17, 58.18, Notice **ARC 4769B** 12/21/05
 Implementation of streamlined sales and use tax Act, 211.1, adopt chs 212 to 214, 225, 230, Filed **ARC 4714B** 12/7/05

SECRETARY OF STATE[721]

Temporary waiver of accessibility requirements, 21.50(7), Notice **ARC 4743B** 12/21/05
 Voting systems, 22.1, 22.262, 22.351, 22.434, 22.464, Filed **ARC 4742B** 12/21/05

SCHOOL BUDGET REVIEW COMMITTEE[289]

EDUCATION DEPARTMENT[281]“umbrella”

Mandatory implementation of generally accepted accounting principles,
 6.5(1) to 6.5(5), Notice **ARC 4723B** 12/7/05

SOIL CONSERVATION DIVISION[27]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”

Conservation practices revolving loan fund, 11.20 to 11.22, 11.23(2), 11.24(1) to 11.24(5),
Notice **ARC 4728B**, also Filed Emergency **ARC 4729B** 12/7/05

STATE PUBLIC DEFENDER[493]

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Increase in reimbursement rate of automobile mileage for court-appointed attorneys,
 12.8(1)“a,” Filed **ARC 4698B** 12/7/05

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Organization, 1.5, 1.5(2), 5.2(1)“a,” 5.4, 17.3, 17.3(4), 17.3(5), Notice **ARC 4754B** 12/21/05

UTILITIES DIVISION[199]

COMMERCE DEPARTMENT[181]“umbrella”

Telecommunications providers, 22.1(1), 22.1(3), 22.1(4), 22.1(6), 22.2(3),
 22.2(5)“a,” “b,” “f,” “m,” “p,” and “s” to “v,” 22.2(6), 22.3(1) to 22.3(4), 22.3(8), 22.3(9),
 22.3(13), 22.4(1), 22.4(2), 22.4(2)“a,” “b” and “h,” 22.4(3)“c”(4), 22.4(3)“d” and “l,”
 22.4(6), 22.4(7)“b” and “i,” 22.5(13), 22.6(1)“c,” 22.6(2)“a,” “c” and “d,” 22.10, 22.11,
 22.12(1), 22.13(1), 22.21, 22.23(2), 22.23(2)“a”(5), Filed **ARC 4761B** 12/21/05

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Mandatory and prohibited successorships; waiver of overpayments during processing of an appeal;

classification of construction employers, 23.32, 23.43(3)“b”(3), 23.82(1)“a,” Notice **ARC 4746B** 12/21/05

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

EDITOR'S NOTE: Terms ending April 30, 2007.

Senator Jeff Angelo
P.O. Box 604
Creston, Iowa 50801

Senator Michael Connolly
3458 Daniels Street
Dubuque, Iowa 52002

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

Senator Mary Lundby
P.O. Box 648
Marion, Iowa 52302-0648

Senator Paul McKinley
21884 483rd Lane
Chariton, Iowa 50049

Joseph A. Royce
Legal Counsel
Capitol, Room 116A
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-5995

Representative Danny Carroll
244 400th Avenue
Grinnell, Iowa 50112

Representative George Eichhorn
P.O. Box 140
Stratford, Iowa 50249

Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536

Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641

Representative Geri Huser
213 Seventh Street NW
Altoona, Iowa 50009

Sonya Streit
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
EDUCATIONAL EXAMINERS BOARD[282]		
Teacher librarian, 14.140(8) to 14.140(10) IAB 12/7/05 ARC 4721B	Room 3 North Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 29, 2005 1 p.m.
EDUCATION DEPARTMENT[281]		
Extracurricular interscholastic competition, 36.1, 36.4, 36.14 to 36.16 IAB 12/7/05 ARC 4731B (ICN Network)	ICN Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	January 11 and 26, 2006 1 p.m.
	Keystone AEA 1 1400 Second St. NW Elkader, Iowa	January 11 and 26, 2006 1 p.m.
	Room 106, Charles City Center North Iowa Area Comm. College 200 Harwood Dr. Charles City, Iowa	January 11 and 26, 2006 1 p.m.
	Room 22, Library Bldg. Iowa Lakes Community College 300 S. 18th St. Estherville, Iowa	January 11 and 26, 2006 1 p.m.
	Room 13, Attendance Center. Iowa Lakes Community College 2111 Hwy. 169 North Algona, Iowa	January 11 and 26, 2006 1 p.m.
	Fiber Optic Rm. 118, Attendance Ctr. Iowa Lakes Community College 1900 N. Grand Ave. Spencer, Iowa	January 11 and 26, 2006 1 p.m.
	Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Dr. Emmetsburg, Iowa	January 11 and 26, 2006 1 p.m.
	Reg Johnson Hall 105 Ellsworth Community College 1100 College Ave. Iowa Falls, Iowa	January 11 and 26, 2006 1 p.m.
	Room 806, Continuing Ed. Center Iowa Valley Community College 3702 S. Center St. Marshalltown, Iowa	January 11 and 26, 2006 1 p.m.
	Room 110, Tama Hall Hawkeye Comm. College 1501 E. Orange Rd. Waterloo, Iowa	January 11 and 26, 2006 1 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)
(ICN Network)

Room N147, Lagomarcino Hall Iowa State University Ames, Iowa	January 11 and 26, 2006 1 p.m.
Room 105, Larson Hall Clinton Comm. College 1000 Lincoln Blvd. Clinton, Iowa	January 11 and 26, 2006 1 p.m.
Room 60, Muscatine Comm. College 152 Colorado St. Muscatine, Iowa	January 11 and 26, 2006 1 p.m.
Room 210, Scott Comm. College 500 Belmont Rd. Bettendorf, Iowa	January 11 and 26, 2006 1 p.m.
Room 116, Red Oak Center Southwestern Comm. College 2300 N. Fourth St. Red Oak, Iowa	January 11 and 26, 2006 1 p.m.
Room 2, Conference Center NE Iowa Comm. College 10250 Sundown Rd. Peosta, Iowa	January 11 and 26, 2006 1 p.m.
Room 128, Careers Bldg., NIACC 500 College Dr. Mason City, Iowa	January 11 and 26, 2006 1 p.m.
Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	January 11 and 26, 2006 1 p.m.
Room 100, Preus Bldg. Luther College 700 College Dr. Decorah, Iowa	January 11 and 26, 2006 1 p.m.
Lib. 204, Prairie Lakes AEA 8 330 Avenue M Fort Dodge, Iowa	January 11 and 26, 2006 1 p.m.
Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	January 11 and 26, 2006 1 p.m.
Southern Prairie AEA 15 2814 N. Court St. Ottumwa, Iowa	January 11 and 26, 2006 1 p.m.
Looft Hall, Iowa Western Comm. Coll. 2700 College Rd. Council Bluffs, Iowa	January 11 and 26, 2006 1 p.m.
Iowa City Comm. School Dist. 509 S. Dubuque St. Iowa City, Iowa	January 11 and 26, 2006 1 p.m.

EDUCATION DEPARTMENT[281] (Cont'd)
(ICN Network)

Room CV15B, Indian Hills Comm. Coll. North First St. Centerville, Iowa	January 11 and 26, 2006 1 p.m.
Room 410, Bldg. D Northwest Iowa Community College 603 West Park St. Sheldon, Iowa	January 11 and 26, 2006 1 p.m.
Iowa Lakes Community College 2008 Hill Ave. Spirit Lake, Iowa	January 11 and 26, 2006 1 p.m.
AG Room 331 Southeastern Community College 1500 W. Agency West Burlington, Iowa	January 11 and 26, 2006 1 p.m.
Room 7B, Information Tech. Center Buena Vista University 610 W. Fourth St. Storm Lake, Iowa	January 11 and 26, 2006 1 p.m.
AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	January 11 and 26, 2006 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Water quality loan programs, 40.2, ch 44, 90.1 to 90.3, 91.1, 91.2, 91.8 to 91.11, chs 92, 93 IAB 12/21/05 ARC 4770B	401 SW Seventh St. Des Moines, Iowa	January 11, 2006 10 a.m.
Animal feeding operations— designated wetlands, 65.1 IAB 12/21/05 ARC 4771B	Public Library 702 16th St. Spirit Lake, Iowa	January 19, 2006 6:30 p.m.
	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	January 25, 2006 6:30 p.m.
	Public Library 129 N. Court Ottumwa, Iowa	January 26, 2006 6 p.m.
	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 31, 2006 2:30 p.m.

HUMAN SERVICES DEPARTMENT[441]

Accreditation of providers of services to persons with mental illness, mental retardation, and developmental disabilities, 24.1, 24.3 to 24.7 IAB 12/21/05 ARC 4751B	Conference Room 104 City View Plaza 1200 University Ave. Des Moines, Iowa	January 11, 2006 8 a.m.
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HUMAN SERVICES DEPARTMENT[441] (Cont'd)

Second Floor Conference Room Story County Human Services Bldg. 126 S. Kellogg St. Ames, Iowa	January 11, 2006 8:30 a.m.
Rooms A and B, First Floor Trosper-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	January 11, 2006 9 a.m.
Sixth Floor Conference Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	January 11, 2006 10 a.m.
Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	January 12, 2006 9 a.m.
Room 220, Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	January 12, 2006 10 a.m.
ICN Room Pottawattamie County DHS Office 417 E. Kanessville Blvd. Council Bluffs, Iowa	January 12, 2006 1 p.m.
Large Conference Room Wapello County DHS 120 E. Main St. Ottumwa, Iowa	January 12, 2006 1 p.m.
Fifth Floor Conference Room Iowa Bldg. 411 Third St. SE Cedar Rapids, Iowa	January 13, 2006 1 p.m.

LABOR SERVICES DIVISION[875]

OSHA regulations—adoption by reference, 10.20 IAB 12/21/05 ARC 4774B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	January 13, 2006 9 a.m.
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LOTTERY AUTHORITY, IOWA[531]

Retailer license; monitor vending machines, 1.3, 12.1(1), 14.9, 14.21(4) IAB 12/21/05 ARC 4732B	2323 Grand Ave. Des Moines, Iowa	January 10, 2006 10 a.m. (If requested)
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NATURAL RESOURCE COMMISSION[571]

Nonresident deer hunting, 94.1, 94.6 to 94.8 IAB 12/7/05 ARC 4715B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 11, 2006 10:30 a.m.
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NATURAL RESOURCE COMMISSION[571] (Cont'd)

Nuisance wildlife control, ch 114 IAB 12/7/05 ARC 4716B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 11, 2006 11:30 a.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology arts and sciences examiners, amendments to chs 60, 61, 63 to 65 IAB 12/7/05 ARC 4704B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 3, 2006 1 to 1:30 p.m.
Cosmetology arts and sciences examiners—competency examination, 65.6 IAB 11/23/05 ARC 4684B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	December 23, 2005 1 to 1:30 p.m.
Physical therapists—discipline, 202.5 IAB 12/21/05 ARC 4734B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 10, 2006 9 to 9:30 a.m.
Occupational therapists—discipline, 209.5 IAB 12/21/05 ARC 4733B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 10, 2006 9 to 9:30 a.m.
Psychologists, 240.2(1), 242.5 IAB 12/7/05 ARC 4699B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 3, 2006 9:30 to 10 a.m.
Respiratory care practitioners— discipline, 263.5 IAB 12/21/05 ARC 4739B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 10, 2006 9:30 to 10 a.m.
Social workers—competency examination, 283.5 IAB 12/7/05 ARC 4702B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 3, 2006 10:30 to 11 a.m.
Speech pathologists and audiologists— competency examination, 304.5 IAB 11/23/05 ARC 4694B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 3, 2006 9 to 9:30 a.m.
Interpreters for the hearing impaired— continuing education, adopt ch 362 IAB 12/21/05 ARC 4744B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 10, 2006 1 to 1:30 p.m.
Interpreters for the hearing impaired— discipline, adopt ch 363 IAB 12/21/05 ARC 4745B	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	January 10, 2006 1 to 1:30 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Volunteer health care provider program, amendments to ch 88 IAB 12/7/05 ARC 4701B	Room 517, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa	December 27, 2005 1 to 2 p.m.
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PUBLIC SAFETY DEPARTMENT[661]

Certification of automatic fire extinguishing system contractors, adopt ch 275 IAB 12/21/05 ARC 4753B	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	January 18, 2006 10 a.m.
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SCHOOL BUDGET REVIEW COMMITTEE[289]

Use of generally accepted accounting principles, 6.5 IAB 12/7/05 ARC 4723B (ICN Network)	Second Floor ICN Room Grimes State Office Bldg. Des Moines, Iowa	January 5, 2006 1 p.m.
	Keystone AEA 1 1400 Second St. NW Elkader, Iowa	January 5, 2006 1 p.m.
	AEA 4 1382 Fourth Ave. NE Sioux Center, Iowa	January 5, 2006 1 p.m.
	Room 101, Emerson Bldg. 316 N. Third St. Eagle Grove, Iowa	January 5, 2006 1 p.m.
	Looft Hall – 1 Iowa Western Comm. Coll. 2700 College Rd. Council Bluffs, Iowa	January 5, 2006 1 p.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	January 5, 2006 1 p.m.
	Prairie Lakes AEA 8 Hwy. 18 and Second St. Cylinder, Iowa	January 5, 2006 1 p.m.
	State Room, AEA 267 91848 265th St. Clear Lake, Iowa	January 5, 2006 1 p.m.
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	January 5, 2006 1 p.m.
	High School 421 Terrace Dr. Burlington, Iowa	January 5, 2006 1 p.m.
	Indian Hills Community Coll., #3 651 Indian Hills Dr. Ottumwa, Iowa	January 5, 2006 1 p.m.
	R.M. Wolfe Education Center Iowa Valley Community College 3405 S. Center St. Marshalltown, Iowa	January 5, 2006 1 p.m.
	Louisa Room, Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	January 5, 2006 1 p.m.
	Room 223, West High School 2001 Casselman Sioux City, Iowa	January 5, 2006 1 p.m.
	Room 32B Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	January 5, 2006 1 p.m.

SOIL CONSERVATION DIVISION[27]

Conservation practices revolving loan fund, amendments to ch 11 IAB 12/7/05 ARC 4728B (See also ARC 4729B)	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 10, 2006 2 p.m.
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Organization, 1.5, 5.2(1), 5.4, 17.3 IAB 12/21/05 ARC 4754B	Thompson Conference Room Bldg. W-4, Camp Dodge Johnston, Iowa	January 10, 2006 1 p.m.
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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Mandatory and prohibited successorships; overpayments; construction employers, 23.32, 23.43(3), 23.82 IAB 12/21/05 ARC 4746B	1000 E. Grand Ave. Des Moines, Iowa	January 10, 2006 9:30 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

“Umbrella” agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory “umbrellas.”

Other autonomous agencies which were not included in the original reorganization legislation as “umbrella” agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
 ATTORNEY GENERAL[61]
 AUDITOR OF STATE[81]
 BEEF INDUSTRY COUNCIL, IOWA[101]
 BLIND, DEPARTMENT FOR THE[111]
 CAPITAL INVESTMENT BOARD, IOWA[123]
 CITIZENS’ AIDE[141]
 CIVIL RIGHTS COMMISSION[161]
 COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Division[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
 Savings and Loan Division[197]
 Utilities Division[199]
 CORRECTIONS DEPARTMENT[201]
 Parole Board[205]
 CULTURAL AFFAIRS DEPARTMENT[221]
 Arts Division[222]
 Historical Division[223]
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
 City Development Board[263]
 Grow Iowa Values Board[264]
 Iowa Finance Authority[265]
 EDUCATION DEPARTMENT[281]
 Educational Examiners Board[282]
 College Student Aid Commission[283]
 Higher Education Loan Authority[284]
 Iowa Advance Funding Authority[285]
 Libraries and Information Services Division[286]
 Public Broadcasting Division[288]
 School Budget Review Committee[289]
 EGG COUNCIL, IOWA[301]
 ELDER AFFAIRS DEPARTMENT[321]
 EMPOWERMENT BOARD, IOWA[349]
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
 EXECUTIVE COUNCIL[361]
 FAIR BOARD[371]
 GENERAL SERVICES DEPARTMENT[401]
 HUMAN INVESTMENT COUNCIL[417]
 HUMAN RIGHTS DEPARTMENT[421]
 Community Action Agencies Division[427]
 Criminal and Juvenile Justice Planning Division[428]
 Deaf Services Division[429]
 Persons With Disabilities Division[431]
 Latino Affairs Division[433]
 Status of African-Americans, Division on the[434]
 Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]
INFORMATION TECHNOLOGY DEPARTMENT[471]
INSPECTIONS AND APPEALS DEPARTMENT[481]
 Employment Appeal Board[486]
 Foster Care Review Board[489]
 Racing and Gaming Commission[491]
 State Public Defender[493]
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
 Appeal Board, State[543]
 City Finance Committee[545]
 County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATURAL RESOURCES DEPARTMENT[561]
 Energy and Geological Resources Division[565]
 Environmental Protection Commission[567]
 Natural Resource Commission[571]
 Preserves, State Advisory Board for[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND
 BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
 Homeland Security and Emergency Management Division[605]
 Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
 Substance Abuse Commission[643]
 Professional Licensure Division[645]
 Dental Examiners Board[650]
 Medical Examiners Board[653]
 Nursing Board[655]
 Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
 Archaeologist[685]
REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
 Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
 Labor Services Division[875]
 Workers' Compensation Division[876]
 Workforce Development Board and
 Workforce Development Center Administration Division[877]

ARC 4770B

ENVIRONMENTAL PROTECTION
COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.299, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 40, “Scope of Division—Definitions—Forms—Rules of Practice”; to rescind Chapter 44, “Drinking Water Revolving Fund,” and adopt new Chapter 44, “Drinking Water State Revolving Fund”; to amend Chapter 90, “Scope of Title—Definitions—Forms”; to amend Chapter 91, “Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund”; to rescind Chapter 92, “State Revolving Fund Loans for Wastewater Treatment and Water Pollution Control,” and adopt new Chapter 92, “Clean Water State Revolving Fund”; and to rescind Chapter 93, “Onsite Wastewater Treatment System Assistance Program,” and adopt new Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs,” Iowa Administrative Code.

The primary purposes of the proposed amendments are to transfer responsibility for financial analysis and loan processing to the Iowa Finance Authority (IFA) and to update program rules to reflect new, streamlined processes. These amendments include:

- Providing for an annual Intended Use Plan with quarterly updates as needed;
- Setting interest rates, terms, and fees in the Intended Use Plan rather than in rules to allow for greater program flexibility;
- Updating project scoring criteria based on the latest federal regulations and state priorities;
- Reworking definitions to more closely correlate with federal requirements and state processes;
- Eliminating the requirement for proportionality in user charge systems;
- Adding requirements that project applicants follow department processes;
- Changing eligibility criteria for the Onsite Wastewater System Assistance Program to allow siting for multiple home systems;
- Changing eligibility criteria for animal feeding operations to allow loans to newer facilities through the Livestock Water Quality Facilities Program;
- Changing eligibility criteria in the Local Water Protection Program to require a manure management plan instead of a comprehensive nutrient management plan;
- Allowing an option for direct loans through the General Non-Point Source Program; and
- Accepting applications for the General Non-Point Source Program on a continuous basis.

Two changes in structure are also proposed: (1) to move all program definitions to Chapter 40 (drinking water) and Chapter 90 (clean water); and (2) to cover point source requirements primarily in Chapter 92 and move nonpoint source requirements to Chapter 93.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 11, 2006. Such written materials should be directed to Water Quality Bureau, Iowa Department of Natural Resources, 502 East Ninth Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8995. Persons who wish to convey their views orally should contact the Bureau at (515)242-6043 or TDD (515)242-5967 or at the Bureau offices on the fifth floor of the Wallace State Office Building.

A public hearing will be conducted at the DNR water supply office at 401 SW 7th Street, Des Moines, Iowa, on January 11, 2006, 10 a.m., at which time persons may present their views either orally or in writing.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 455B.291 to 455B.299, 466.8 and 466.9.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **567—40.2(455B)** by adopting the following **new** definitions in alphabetical order:

“Authority” means the Iowa finance authority (IFA) as established by Iowa Code chapter 16.

“Commission” means the environmental protection commission of the state of Iowa.

“Conservation easements” means an interest in land that entitles a person to use the land possessed by another (affirmative easement), or to restrict uses of the land subject to the easement (negative easement). A conservation easement restricts the landowner to uses that are compatible with resource conservation.

“Contiguous” means directly adjacent or touching along all or most of one side of a legally defined piece of property. Tracts of land involved in the same operation or water supply and separated only by roads, railroads, or bike trails are deemed contiguous tracts.

“DWSRF” means the drinking water state revolving fund, also known as the drinking water facilities revolving loan fund as defined in Iowa Code section 455B.291.

“DWSRF funds” means the combination of a particular fiscal year’s federal capitalization grant appropriation plus the 20 percent state of Iowa match and any additional funds made available through the program.

“Eligible cost” means the cost of all labor, material, machinery, equipment, loan initiation and loan service fees, project planning, design and construction engineering services, legal fees and expenses directly related to the project, capitalized interest during construction of the project, and all other expansion, construction, and rehabilitation of all or part of a project incurred after the project is placed on the draft intended use plan as a fundable project, subject to approval by the commission.

“Federal cross-cutters” means the federal laws and authorities that apply to projects funded through the DWSRF.

“Fiscal year” means the federal fiscal year starting October 1 and ending September 30.

“Intended use plan (IUP)” means a plan identifying the intended uses of funds available for loans in the DWSRF for each fiscal year as described in Section 1452 of the Safe Drinking Water Act.

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“Loan agreement” means an executed contract between a loan applicant and the director and the authority, confirming the purpose of the loan, the amount and terms of the loan, the schedule of the loan payments and requirements, and any other agreed-upon conditions set forth by the director and the authority.

“Project priority list” means the list of projects in priority order that may qualify for DWSRF loan assistance contained in the IUP document prepared pursuant to rule 567—44.8(455B). The priority list shall identify all projects eligible for funding and the points assigned to each project pursuant to 567—subrule 44.7(8).

“SDWA” means the Safe Drinking Water Act.

“Significant noncompliance” means the failure to comply with any national primary drinking water standard as adopted by the state of Iowa according to criteria established by the administrator of the federal Environmental Protection Agency.

“Viability” means the technical, financial, and managerial ability to comply with applicable national primary drinking water standards as adopted by the state of Iowa. Viability is the ability of a system to remain in compliance insofar as the requirements of the SDWA.

ITEM 2. Rescind 567—Chapter 44 and adopt the following **new** chapter in lieu thereof:

CHAPTER 44

DRINKING WATER STATE REVOLVING FUND

567—44.1(455B) Statutory authority. The authority for the Iowa department of natural resources to administer the drinking water state revolving fund (DWSRF) in order to assist in the construction of drinking water treatment facilities is provided by Iowa Code sections 455B.291 to 455B.299.

567—44.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate, and control pollution. As a part of that general responsibility, the department and the Iowa finance authority (authority) are jointly designated to administer the DWSRF loan program to assist in the financing of infrastructure projects pursuant to the Safe Drinking Water Act (SDWA). A project must comply with this chapter to be eligible for a DWSRF loan. This chapter provides the background, the general rules of practice for the department’s administration of the program, including the criteria for loan eligibility, and the general project and program administration rules.

567—44.3(455B) Purpose. The DWSRF provides financial assistance to eligible public water systems for the design and construction of facilities to ensure public health and the provision of safe and adequate drinking water. The DWSRF reserves a certain percentage of money each year from capitalization grants: for administrative purposes (up to 4 percent), to assist with the administration of the public water supply supervision program (up to 10 percent), to provide technical assistance to smaller drinking water systems (up to 2 percent) and to fund local assistance and other authorized activities (up to 15 percent). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E. The department establishes priorities for the use of the DWSRF and publishes them in its intended use plan (IUP). The IUP will identify all proposed uses of available funds. All potentially funded projects or activities must be approved by the department.

The EPA provides capitalization grants for this program to the department. Financial assistance projects must be in con-

formance with the requirements of the Public Health Service Act (42 U.S.C. 300f et seq.), United States Code, Title XIV, Section 1452, Part E.

567—44.4(455B) Definitions. Definitions provided in 567—Chapter 40 apply to this chapter.

567—44.5(455B) Set-asides. The Safe Drinking Water Act (SDWA) authorizes set-aside funds to enable states to implement specific requirements of the SDWA. The amount and use of set-aside money is set each year in the IUP pursuant to rule 567—44.8(455B) and may be adjusted from year to year based on available funds and priorities as outlined in the IUP. As prescribed in the SDWA, set-asides will include but are not limited to:

44.5(1) Administration expense set-aside. These set-aside funds are to be used to administer the DWSRF. Up to 4 percent of the funds allotted through federal capitalization grants may be used for the reasonable costs of administering the programs and providing technical assistance. These costs may include such activities as issuing debt; DWSRF program start-up costs; audit costs; financial, management and legal consulting fees; development of IUP and priority ranking system; development of affordability criteria; and cost of support services provided by other state agencies. If the entire 4 percent is not obligated for administrative costs in one year, the excess balance may be reserved and used for administrative costs in later years.

44.5(2) Small system technical assistance set-aside. These set-aside funds will be used to provide technical assistance to public water supplies serving 10,000 people or fewer. Up to 2 percent of funds allotted through federal capitalization grants may be used for this purpose. These funds may be used to support a technical assistance team or to contract with outside organizations to provide technical assistance. Applications for third-party technical assistance proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2) through 44.7(7) prior to publication of the IUP in a given year. If the entire 2 percent is not obligated for these activities in one year, the excess balance may be reserved and used for the same activities in later years.

44.5(3) Local assistance and other state programs set-aside. Funds from this set-aside may be used for other categories of activities to assist development or implementation of local drinking water protection initiatives or both. Up to 15 percent of the capitalization grant amount may be used for the following activities, with the stipulation that not more than 10 percent of the capitalization grant amount may be used for any one activity:

a. Assistance, in the form of a loan, to a public water system to acquire land or a conservation easement for source water protection purposes;

b. Assistance, in the form of a loan, to a community water system to implement voluntary, incentive-based source water quality protection measures;

c. Establishment and implementation of wellhead protection programs; and

d. Provision of funding to a public water system to implement technical or financial assistance under the capacity development strategy.

Source water (quality partnership) petition programs (made by individual or consortiums of public water systems) established under Section 1454 of the SDWA amendments of 1996 (P.L. 104-182, August 6, 1996) will be eligible for money under this set-aside. Applications for third-party source water petition proposals must be submitted and will be accepted and evaluated pursuant to subrules 44.7(2)

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through 44.7(7) prior to publication of the IUP in a given year. These funds may not be reserved for future use.

44.5(4) State program management set-aside. Funds from this set-aside may be reserved for public water supply supervision (PWSS) programs, including the following uses:

- a. Administration of the state PWSS program;
- b. Administration or provision of technical assistance through source water protection programs, which include the Class V portion of the Underground Injection Control Program;
- c. Development and implementation of a capacity development strategy; and
- d. Development and implementation of an operator certification program.

This set-aside allows a maximum of 10 percent of the total available federal capitalization grant in a particular year and requires a one-to-one match. If the entire 10 percent is not obligated for these activities in one year, the excess balance may be reserved and used for the same activities in later years.

567—44.6(455B) Eligibility.

44.6(1) Eligible systems. The following systems are eligible to receive funds from the DWSRF for improvements as listed and defined in the Safe Drinking Water Act amendments of 1996 (P.L. 104-182), August 6, 1996).

- a. Community drinking water systems.
- b. Nonprofit nontransient noncommunity drinking water systems.
- c. Cities and counties that are PWS or can become viable new PWS as a result of this project.
- d. Any other governmental subdivision of the state responsible for a public water supply.

44.6(2) Ineligible systems. The following systems are ineligible to receive funds from the DWSRF.

- a. Any applicant that has not adopted and implemented satisfactory department-approved water conservation plans and practices, or demonstrated to the department an ongoing effort to adopt and implement such plans and practices within one calendar year from the date of the loan agreement.
- b. Any applicant in significant noncompliance with any applicable primary drinking water regulation, unless the project will return the applicant to compliance.
- c. Any applicant lacking viability (an applicant whose system lacks technical, financial, and managerial viability to comply with the SDWA and is nonviable or lacks capacity according to the definition of the SDWA), unless the applicant commits to undertake appropriate changes in operations, including ownership, management accounting, rates, maintenance, consolidation, alternative sources of water supply, or other procedures if the director determines that such changes are necessary to demonstrate viability.
- d. Projects and activities deemed ineligible for participation in the DWSRF by the U.S. Environmental Protection Agency's Drinking Water State Revolving Fund regulations (40 CFR Part 35, Subpart L) or program guidance, or by the department.

44.6(3) Certified operator requirement. A system without a certified operator shall not receive loan assistance. The system must submit to the department the name, certification number and certification expiration date of the operator certified, pursuant to 567—Chapter 81, to be directly responsible (in direct responsible charge) for the operation of the facility before a construction loan agreement will be signed.

567—44.7(455B) Project point ranking system (project priority list).

44.7(1) Project priority list. The director shall develop and maintain a project priority list of public water systems that have a need for either a new or an upgraded drinking water system, including individual subcomponents. The term "public water system projects" may also include separate segments or phases of a segmented or phased project. The project priority list may include projects which are not ready to proceed (e.g., the list may include projects that by their nature are planned and implemented for a longer term than one year or projects that are unable to be implemented within one calendar year). Projects may be construed as not ready to proceed due to emergencies experienced by the applicant (or the state), or due to construction or other scheduling constraints. Projects will continue to be eligible for loan funding when funded for the first year of a multiyear project effort.

44.7(2) Application. Applications for placement on the project priority list shall be accepted by the department on a continuous basis.

44.7(3) Amendment of project priority list. The department may amend the project priority list to add eligible projects or remove projects. List adjustment can be done to ensure that the department uses at least 15 percent of each capitalization grant and required state match to provide loan assistance to systems serving fewer than 10,000 persons (allowable under Section 1452(a)(2) of SDWA), to the extent that there are a sufficient number of eligible projects to fund.

44.7(4) Preliminary engineering study requirements. To be eligible for placement on the project priority list, the water system must have a preliminary engineering study of potential system needs (e.g., a "planning" study) approved by the department, and must submit to the director a written application for placement on the list. The application must include:

- a. A description of the type of project for which financial assistance is being requested;
- b. The amount of financial assistance being requested; and
- c. A proposed project construction schedule.

Application shall be made on the form from the DWSRF application package provided by the department; the applicant may include additional information in the application. Forms may be obtained from the Environmental Services Division, Iowa Department of Natural Resources, Water Supply Engineering Section, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309, or at www.iowasrf.com.

44.7(5) Construction project requirements. An applicant seeking financial assistance for construction must include with the application:

- a. A description of the entity's current drinking water supply system, including a discussion of existing and potential problems or failures in the current drinking water system and compliance with state and federal criteria;
- b. An estimate of the population and the number of households to be served;
- c. A completed Self-Assessment Manual for Iowa Water System Viability;
- d. A description of the basis for project design;
- e. A map showing the geographical area that the project is expected to serve; and
- f. A cost estimate for the selected project.

44.7(6) Project priority list ranking criteria. A construction project's priority points shall be the total number of points assigned by the department pursuant to the department's scoring system, delineated in subrule 44.7(7). All projects shall be listed in descending order on the published

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project priority list according to the number of total priority points assigned each project. When two or more projects have the same priority point total, the project sponsored by a system in the process of consolidation shall receive the higher priority. A private system in the process of forming and becoming a PWS shall have the next highest priority (if the system is determined by U.S. EPA regulations or guidance to be eligible for DWSRF funding), and the entity with the smallest served population shall receive the next highest priority. The most current official census population shall be used for all municipalities which serve only the population within their incorporated boundaries and which apply for these loan funds. For all other municipalities and other community public water supply systems and for nontransient noncommunity systems, population will be counted based on either the actual population verifiable by the department or population as calculated by multiplying by an occupancy fac-

tor of 2.5 persons per service connection. New systems will be counted based on census data, an occupancy factor of 2.5 persons per service connection, an occupancy factor of 2.5 persons per identifiable occupied building, or other means acceptable to the department. Funding shall be offered to the projects with highest rank on the project priority list, subject to the project's readiness to proceed, and shall proceed from the highest project downward, subject to availability of funds. The published project priority list shall also be included in the department's intended use plan (IUP), pursuant to rule 567—44.8(455B). Projects involving a multiyear, phased effort may carry over their original priority point total from the previous year's application, provided that the project owner reapplies at each stage.

44.7(7) Project priority list scoring criteria. Eligible public drinking water supply projects shall be scored pursuant to the following priority point scoring system.

IOWA DWSRF PROJECT SCORING SYSTEM

(Multiple attributes within a lettered subcategory are not additive, but points are additive from other subcategories; consolidation/restructuring is an approved option to correct violations or "improve" treatment.)

Scoring Criterion	Points
A. Human Health Risk-related Criteria (maximum of 60 points)	
1. Correction of acute MCL or Tier I treatment technique violation as defined in 567—paragraph 42.1(2)“a” (fecal coliform, nitrate, nitrite, chlorine dioxide, turbidity, CT corrective measures, and Giardia)	60
2. Correction of nonacute MCL violation (IOCs excluding acute contaminants, radionuclides, SOCs, VOCs)	50
3. Correction of an expected MCL or treatment technique violation (acute or nonacute)	45
4. Correction of Tier II treatment technique violation as defined in 567—paragraph 42.1(3)“a” (Pb/Cu corrective measures, disinfection byproduct precursor removal)	40
5. Mitigation of an imminent threat from groundwater contamination (from UST site, from CERCLA site, from uncontrolled site)	35
6. Connection of individual residences to PWS to eliminate use of contaminated individual private wells (bacterial, nitrate, radionuclide, or IOC/VOC/SOC well contamination all eligible)	35
7. Replacement of asbestos cement pipe (replace at least 200 feet of pipe)	15
B. Infrastructure and Engineering-related Improvement Criteria (maximum of 35 points)	
1. Development of system redundancy and additional source to meet peak day demand with largest well or intake out of service; plant process rehabilitation (made to ensure redundancy of treatment units to protect against acute or chronic MCL with system's largest treatment unit out of service); water storage improvements (system reliability enhancement—to increase effective storage to Average Daily Demand, including either at-ground or elevated storage); pumping improvements meeting hydraulic and Ten-State Standard requirements for Average Daily Demand.	35
2. Water systems over capacity expansion. Points are allowable only when system is operating at 85% or more of system design capacity. Source, plant, or distribution system improvements for system expansion are all eligible under this category.	30
3. Pressure and other distribution system improvements, including pump upgrades, pipe looping, valves, fittings, line replacement, hydrants, pumping stations, and water meters	20
4. Treatment plant improvements, excluding operation and maintenance costs	15
5. Provision of emergency power/emergency pumping capacity including purchase of diesel generators or installation of automatic switching systems	15
6. Security improvements (fencing, lighting, video surveillance, locks, access control)	10
C. Affordability Criteria (maximum of 10 points)	
1. System serves low-income population (Community Development Block Grant (CDBG) Iowa Department of Economic Development (IDED) Low-Moderate Income Criteria (LMI))	10

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Scoring Criterion	Points
D. Special Category Improvements (maximum of 15 points)	
1. Wellhead or source water protection plan development or implementation meeting department standards, including loans for land or easement acquisition	15
2. Water conservation measures/conservation plan preparation, adoption, and enforcement	5
E. IDNR Adjustment Factor for Population	
1. (Project Serves) Population less than 10,000	10
TOTAL MAXIMUM POINTS	130

567—44.8(455B) Intended use plan.

44.8(1) Development. The director shall prepare an intended use plan (IUP) at least annually and on a quarterly basis as needed. The IUP will be submitted to a public hearing and approved by the commission and U.S. EPA.

44.8(2) Contents. The IUP will identify the anticipated uses of loan funds and will include:

a. The state project priority list (defined in rule 44.7(455B)) which includes all projects that are eligible for DWSRF loans and any proposed activities eligible for assistance under set-aside authority of the SDWA. The list will include the name of the eligible recipient, applicable PWS permit number, the projected amount of loan assistance, and a schedule of estimated disbursement of funds. The department will consider the following in developing the list of eligible recipients for the intended use plan:

(1) Whether a project will be ready to proceed on a schedule consistent with time requirements for outlay of funds; and

(2) Whether the project addresses the need upon which the system's priority is based.

b. Discussion of the long-term and the short-term goals of the DWSRF.

c. Information on the types of activities to be supported by the DWSRF.

d. The method by which the IUP may be amended.

e. Assurances on how the state intends to meet environmental review requirements of the SDWA.

567—44.9(455B) Department initial approval of projects.

44.9(1) Project initiation conference. The department may require the applicant or the applicant's representative to meet at a location designated by the department.

44.9(2) Required project information. An applicant seeking financial assistance from the DWSRF for a construction project must provide the following information to the director for review and approval:

a. Plans and specifications must be signed by a professional engineer holding current license to practice in Iowa.

b. Plans and specifications must be consistent with the project identified in the application submitted pursuant to subrule 44.7(5).

c. The planned project must be described in full, and the construction requirements necessary to complete the project as proposed must be detailed.

d. The project submittal shall include the latest engineering cost estimate for the project.

e. The plans and specifications shall comply with all applicable state statutes, rules, and design standards.

f. Those portions of projects not meeting eligibility requirements may be excluded from the funded project, but included in the submitted plans and specifications if the applicant chooses to keep the loan-ineligible part of the project as part of the overall system improvement. Ineligible portions of projects include but are not limited to dams, water rights, monitoring costs, operation and maintenance expenses, proj-

ects designed primarily in anticipation of speculative growth, and projects needed primarily for fire protection.

g. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial, and financial capability to complete the project.

44.9(3) Department review. An applicant seeking financial assistance from the DWSRF for any project appearing on the project priority list must submit information as required under subrule 44.7(5) on forms provided by and acceptable to the department. Departmental review requirements shall consist of the following:

a. Upon review and approval of construction projects submitted as required under subrule 44.7(5), and the plans and specifications as required under subrule 44.9(2), and following a determination that the project meets the applicable requirements of the SDWA, federal regulations, Iowa statutes, and relevant portions of this chapter, the director shall approve the project in writing.

b. If there is an alteration (change order) to a project after the director approves the project, the eligible applicant must request in writing from the department an amended approval. The director shall review the request and proposed project alteration (change order) and, upon a determination that the project meets the applicable requirements of the SDWA, federal regulations, the August 7, 2000, Drinking Water State Revolving Funds: Interim Final Rule (40 CFR Part 35, Subpart L), program guidance, Iowa statutes, and relevant portions of this chapter, the director shall approve the project as amended.

c. If the project is not approved, the director shall notify the applicant in writing of the reason for disapproval.

567—44.10(455B) General administrative requirements.

44.10(1) Allowable costs. Allowable costs shall be limited to those costs deemed necessary, reasonable, and directly related to the efficient completion of the project. The director will determine project costs eligible for state assistance in accordance with rule 567—44.6(455B). Land purchase, easement, or rights-of-way costs are ineligible with the exception of land which is integral to a project needed to meet or maintain public health protection and which is needed to locate eligible treatment or distribution works. Source water protection easements are considered to be integral to a project. (The acquisition of land or easements has to be from a willing seller.) In addition to those costs identified in this chapter, unallowable costs include the following:

a. Costs of service lines and in-house plumbing.

b. Administrative costs of the loan recipient.

c. Vehicles and tools.

44.10(2) Audits. The recipient shall provide access at all times for the department, the authority, the state auditor and the Office of the Inspector General (OIG) at EPA to all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan pay-

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ment. The same access to the project site(s) shall be provided for inspection purposes.

44.10(3) Cross-cutters. Other federal and state statutes and programs, including federal “cross-cutters,” will be applicable to DWSRF projects.

44.10(4) Additional loan amount. If eligible costs exceed the loan amount, the recipient may request an increase. The director in coordination with the authority will evaluate the request by considering available money in the fund as well as compliance with other state and federal requirements.

567—44.11 Reserved.

567—44.12(455B) Construction phase and postconstruction phase requirements.

44.12(1) Estimated project completion date. The loan recipient must notify the director of the estimated project completion date. A final inspection of the project may be performed by the director to verify that construction is complete (except for weather-related items) and conforms with the approved plans and specifications and all approved change orders.

44.12(2) Adequate project performance. The department shall undertake measures to discern adequate project performance as follows:

a. Three months after initiation of operation of the project, the loan recipient must certify to the director that the project is operating as planned and designed. This certification must be made on a form provided by and approved by the department.

b. If the loan recipient is unable to certify that the project is operating as planned and designed, the recipient must submit a corrective action report to the director for review and approval. An acceptable corrective action report must contain an analysis of the project’s failure to operate as designed; a discussion of the nature, scope, and cost of the action needed to correct the failure; and a schedule for completing the corrective work.

567—44.13(455B) Sanctions. Failure of a project to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapter 40 through 567—Chapter 44 pertaining to drinking water supply systems constitutes grounds for the withholding of loan disbursements. The loan recipient is then responsible for ensuring that the identified problem either in the plans and specifications or in the other relevant portion of the project is rectified such that disbursements may be resumed. Once an agreement for correcting the conditions which led to the withholding of funds is reached between the department and the loan recipient, the retained funds shall be released according to the provisions of the agreement.

567—44.14(455B) Disputes. A person or entity that disagrees with the project rankings, department decisions, or the withholding of project funding pursuant to rules 567—44.7(455B), 567—44.8(455B), or 567—44.13(455B) may request a formal review of the action. The person or entity must submit to the director a request for review in writing within 45 days of the date of notification of the final decision made by the department or department staff. A decision by the director in a formal review case may be further appealed to the commission.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.299.

ITEM 3. Amend rule 567—90.1(455B,17A) as follows:

567—90.1(455B,17A) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As a part of that general responsibility, the department and the Iowa finance authority are jointly designated to administer the *clean water pollution control state revolving fund (CWSRF)* pursuant to Iowa Code sections 455B.291 to 455B.299 and the federal Clean Water Act. This chapter provides the definitions and forms in the department’s administration of the *water pollution control state revolving fund CWSRF*. 567—Chapter 91 contains the criteria for rating and ranking water pollution control projects. 567—Chapter 92 contains the general project and program administration rules. 567—Chapter 93 contains rules for the nonpoint source pollution control programs.

ITEM 4. Amend rule **567—90.2(455B)** as follows:

Adopt the following **new** definitions in alphabetical order:

“Cluster systems” means onsite wastewater treatment systems providing treatment for two or more dwellings with a combined flow not to exceed 1,500 gallons per day.

“CWSRF” means the clean water state revolving fund, also known as the water pollution control works revolving loan fund as defined in Iowa Code section 455B.291.

“Eligible project” means, in the context of the water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those Sections. Only projects classified under one of the following needs categories are eligible for loan assistance: I, II, IIIa, IIIb, IVa, IVb, V, VI, and all subcategories of VII. Projects for the primary purpose of speculative growth are considered ineligible.

“Facility plan” means a report certified by a professional engineer licensed to practice in Iowa and prepared in conformance with Chapter 11 of the Iowa Wastewater Facilities Design Standards (567—paragraph 64.2(9)“b”). This report shall be prepared to include an evaluation of the facility, identify problems, provide alternatives and a recommended solution, outline financing options and project time line, and address other applicable issues ensuring the viability of the project and the facility to meet project goals and discharge requirements.

“Federal cross-cutters” means the federal laws and authorities that apply to projects funded through the DWSRF.

“Financial agent” means the entity or entities that have entered into a contract with the department to carry out the financial administration of the nonpoint source set-aside programs.

“Lending institution” means any bank, bank holding company, national banking association, savings and loan association, or life insurance company; any state or federal government agency or instrumentality; or any other financial institution or entity authorized to make loans in the state of Iowa.

“Loan agreement” means an executed contract between an individual and the participating lending institution which confirms the purpose of the loan, the amount and terms of the loan, the schedule of the loan payments and requirements, and any other agreed-upon conditions set forth by the director.

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"Onsite wastewater treatment system," "onsite treatment system" or "onsite system" means the same as "onsite wastewater treatment and disposal system" as defined in rule 567—69.2(455B).

Amend the following definitions:

"Eligible cost" means the cost of all labor, material, machinery, equipment, loan initiation and service fees, *facility planning*, design and construction engineering services, legal fees and expenses related to the project; capitalized interest during construction of the project; and construction and rehabilitation of all or part of a project incurred after the date of approval of an intended use plan which contains the project on a list approved for WPCSRF CWSRF assistance. For point source projects, facility planning and design engineering services are eligible costs when incurred before the approval of an intended use plan if the costs are included in the application for WPCSRF assistance.

"Fundable applicant" means an eligible entity that meets the following criteria:

1. Appears on the state project priority list;
2. Has submitted a complete application for a water pollution control project with eligible costs;
3. Will be in a state of readiness to proceed with construction and use loan payments in a timely manner; and
4. Has been included on the state's intended use plan as a proposed loan recipient or is otherwise eligible as described in 567—paragraph 92.11(1)"c," 92.12(1)"c," or 92.13(1)"c," or 567—subrule 93.4(4), 93.5(1)"c," 93.6(1)"c," or 93.7(1)"c."

"Needs category" means identified categories of needs which comprise mutually exclusive classes of facilities:

1. to 19. No change.

20. *Category VIII – Individual/decentralized sewage treatment. This category includes needs associated with the rehabilitation or replacement of individual or community sewage disposal systems and the treatment portion of other decentralized sewage disposal technologies.*

20 21. *Category VIII – Concentrated animal feeding operations (CAFO). This category includes the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by agricultural activities related to animal production that are subject to the federal concentrated animal feeding operation regulations.*

24 22. *Category IX – Point source mining. This category addresses the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by point source mining and quarrying activities.*

"State project priority list (PPL)" means the list of projects in priority order that may qualify for WPCSRF CWSRF loan assistance. The list is developed in accordance with 567—Chapter 91. (Also known as the planning list.)

Rescind the following definitions:

"New animal feeding operation" means, for use in 567—Chapter 91 and 567—Chapter 92, an animal feeding operation for which construction was initiated on or after December 31, 2001.

"Project" means, in the context of the water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the Clean Water Act, including construction and un-

dertaking of nonpoint source water pollution control projects and related development activities authorized under those sections.

"Revolving loan funds" means the water pollution control works revolving loan fund and the drinking water facilities revolving loan fund established by Iowa Code sections 455B.291 to 455B.299.

"WPCSRF" means the water pollution control works financing program described in this chapter.

ITEM 5. Amend rule 567—90.3(455B,17A) as follows:

567—90.3(455B,17A) Forms. The following forms are used to apply for assistance and to provide required documentation. All forms may be obtained from Environmental Services Division, Department of Natural Resources, Henry A. Wallace Building, 502 E. Grand, Des Moines, Iowa 50319. Recipients of assistance shall also comply with applicable requirements of the department's rules.

90.3(1) Point source water pollution control project forms.

a. Application package – Form 92.7(4) 542-1320.

b. ~~Loan Agreement form – Form 92.7(8).~~

c. ~~Interim payment form – Form 92.8(1).~~

90.3(2) Livestock water quality facilities forms.

a. Application form for loan assistance – Forms 92.11(2) and 92.11(4) Form 542-8159.

b. Reserved.

90.3(3) Local water protection project forms.

a. Application form for loan assistance – Forms 92.12(2), 92.12(4) and 92.12(5).

b. Reserved.

90.3(4) General nonpoint source project forms.

a. Application form for loan assistance – Forms 92.13(2), 92.13(4) and 92.13(5) Form 542-8156.

b. Reserved.

90.3(5) Onsite wastewater treatment assistance forms.

a. Application form for loan assistance – Forms 93.5(1), 93.5(4) and 93.5(5)"a." Form 542-8045.

b. Reserved.

ITEM 6. Amend rule 567—91.1(455B) as follows:

567—91.1(455B) Statutory authority. The authority for the Iowa department of natural resources to ~~provide loans to eligible entity applicants~~ *administer the clean water state revolving fund (CWSRF)* to assist in the construction of wastewater treatment facilities and water pollution control works is provided in Iowa Code sections 455B.291 to 455B.299. The requirement to have selection criteria and a method for selecting projects or programs for loans is provided in 40 CFR Part 35.3150, July 1, 2002.

ITEM 7. Amend rule 567—91.2(455B), introductory paragraph, as follows:

567—91.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As part of that general responsibility, the department and the Iowa finance authority are jointly designated to conduct the administration of the water pollution control state revolving fund (WPCSRF) CWSRF loan assistance program to assist in the financing of infrastructure projects pursuant to the Clean Water Act. A project must comply with this chapter and 567—Chapter 92 or 567—Chapter 93 to be eligible for a WPCSRF CWSRF loan. This chapter provides the rating criteria to be used to rank eligible projects for funding. Rating criteria are provided for point source projects and nonpoint source projects. The nonpoint source projects are divided into three activities:

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ITEM 8. Amend subrule **91.8(1)**, paragraphs “a” to “e,” as follows:

a. Use classification of receiving waters. This category addresses the receiving water that is impacted or potentially impacted by the existing situation and that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value and shall be cumulative for all designated use classifications of the receiving stream. Points for sludge stabilization, sewers and lift station projects normally will be based on the assigned use of the waters that receive or could receive the effluent discharge. Points for a sewer project that eliminates the need for septic tanks shall be based on the Class C use classification.

Use and Classification	Points
Outstanding national resource waters	50
High quality waters	40
High quality resource waters	10 20
Class A waters	
Lakes or streams draining to lakes Class A1 waters	50
Streams Class A2 waters	45
Urban streams Class A3 waters	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B (CW1) waters	50
Lakes or streams draining to lakes Class B (CW2) waters	40 30
Wetlands Class B (WW) waters	35 30
Streams Class B (LW) waters	30 35
Publicly owned lakes (and streams draining to publicly owned lake) Class B (LR) waters	50 25
Other lakes	30

b. Water quality of receiving waters. This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as Section 303(d) waters. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the wastewater discharge is included on the Section 303(d) list and the probable pollutant source is a point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the wastewater discharge. If no use impairment is identified indicating the water was not assessed, the partially supporting status points will be awarded. Points will be awarded for both sections and then totaled for this category.

Indication of Water Quality	Points
A	
Section 303(d) listed water	
Identified as probable source or contributing to problem: point source	50
High rating for total maximum daily load (TMDL) development	45
Medium rating for TMDL development	35
Low rating for TMDL development	25
B	
Section 305(b) status	
Fully supporting	10
Fully supporting/threatened	15
Partially supporting	20
Not supporting	30
Not assessed	20

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c. Compliance status. This category addresses the compliance status of the proposed project. To provide an incentive for municipal facilities to maintain compliance, more points are given to projects that are in compliance with their NPDES discharge permit when they apply for a loan. Projects that are not in compliance at the time of application, have bypasses, have received administrative orders from the department or have been referred for legal action are given fewer points than a project in compliance. Unsewered community projects will be considered to be in compliance if they are taking action to eliminate public health problems or water quality problems, or both, prior to formal action by the department.

Compliance Status	Points
Has been referred to Iowa attorney general for discharge violation	35 30
Received administrative order from DNR for discharge violations	28 25
Compliance schedule in NPDES permit—existing discharge requirements are not being met	25 20
Compliance schedule in NPDES permit—new discharge requirements are being imposed	38 40
Bypassing during dry weather has been reported in previous 12 months	32 15
Bypassing during wet weather has been reported in previous 12 months	20
Discharge has met all NPDES permit requirements for 12 24 months (at time of application)	38 50
Discharge is in compliance with NPDES permit—no action taken by department (at time of application)	40
Unsewered community and initiates <i>has initiated</i> project on its own	40 50
Unsewered community and has received an administrative order from DNR	25
Plan of action requested or plan of action has been submitted to the department	25
Discharge is not in compliance with NPDES permit—no action taken by department (at time of application)	27

d. Project benefit. This category incorporates several factors including type of project and the relative level of the impact on *public health and the environment*. Points *will be awarded for multiple benefits the primary benefit shall be awarded but the project benefits total can not exceed 20 points*.

Project Benefits	Points
Implementation of TMDL plan	20
Replacement or upgrade of wastewater treatment works to meet water quality-based permit limits	20
Reduce impairments to Class C waters [drinking water]	19
Repair of lift station or collection system to eliminate dry weather bypassing	18
Replacement or upgrade of advanced wastewater treatment system to ensure continued compliance	18
Public health benefit by elimination of frequent sewer backups in homes and businesses	15
Disinfection of wastewater	10
Replacement or upgrade of secondary wastewater treatment system to ensure continued compliance	17
Collection and treatment to replace failed onsite wastewater systems	14
Upgrade of wastewater treatment works to allow for more reliable treatment (advanced or secondary)	16
Elimination of flat sewers	6
Separation of combined sewers	9
Sludge treatment and stabilization	10
Urban storm water management program	5
Sludge storage	10
Eliminate pump station	6

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Project Benefits	Points
<i>Protection of public health; corrective measures for problems that pose a clear and direct impact on human health. Examples are sewer backups into basements and sewer overflows impacting populated areas.</i>	40
<i>Protection of the environment; corrective measures for problems that pose a clear and direct impact on water quality and the environment. Examples are effluent violations and combined sewer overflows.</i>	30
<i>Prevention of the development of problems that will have an impact on public health and the environment. Examples are upgrading a treatment facility for anticipated growth and replacement of a lift station beyond design life.</i>	20

e. Readiness to proceed. This category addresses the status of the project planning, preparation of plans and specification, and overall readiness to proceed with project construction. *Points can be received for reaching multiple milestones. This category is included to reduce the number of projects bypassed on the fundable list due to their inability to achieve readiness for a loan. Projects may still be bypassed or removed from the fundable list according to 567—subrule 91.7(2).*

Project Status	Points
Plans and specifications submitted for review	10
Finding of No Significant Impact (FONSI) issued	8
Facility plan approved	7
Facility plan submitted	6
Facility plan being prepared	5
Plan of action approved	4
No planning completed	0
<i>The project is following the permit application process outlined in department guidance.</i>	20
<i>The applicant has prepared the environmental information document including clearances from other agencies and has submitted the materials to the department.</i>	10
<i>The department and the applicant have agreed on the project schedule and design loading criteria.</i>	10

ITEM 9. Amend **91.9(1)**, paragraph “a,” as follows:

a. Use classification of receiving waters. This category addresses the receiving water that is impacted or potentially impacted by the existing operation and that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value and shall be cumulative for all designated use classifications of the receiving stream. The manure application sites, feedlots, lagoons and basins, and manure and litter storage areas should be considered when determining the points to be awarded.

Use and Classification	Points
Outstanding national resource waters (proposed water use)	50
High quality waters	40
High quality resource waters	40 20
Class A waters	
Lakes or streams draining to lakes Class A1 waters	60 50
Streams Class A2 waters	45
Urban streams Class A3 waters	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B (CW1) waters	
Lakes or streams draining to lakes Class B (CW2) waters	50 30
Wetlands Class B (WW) waters	35 30
Streams Class B (LW) waters	30 35
Publicly owned lakes (and streams draining to publicly owned lake) Class B (LR) waters	50 25
Other lakes	30

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ITEM 10. Amend subrule 91.10(1) as follows:

Amend the introductory paragraph as follows:

91.10(1) Local water protection projects rating criteria. The local water protection projects rating criteria consider the use classification of the receiving waters, water quality of the receiving waters, the watershed management planning status in the watershed where the project is located and a tiebreaker. Priority ranking for the projects is based on the total points awarded for all the categories. The greater total number of points, the higher the ranking.

NOTE: It is likely that the soil conservation projects will be assisted through a linked deposit mechanism and the rating criteria will be used by county soil and water conservation districts to select projects.

Amend paragraph "a" as follows:

a. Use classification of receiving waters. This category addresses the receiving water use classification that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value and shall be cumulative for all designated use classifications of the receiving stream.

Use and Classification	Points
Outstanding national resource waters (proposed water use)	50
High quality waters	40
High quality resource waters	10 20
Class A waters	
Lakes or streams draining to lakes <i>Class A1 waters</i>	60 50
Streams <i>Class A2 waters</i>	45
Urban streams <i>Class A3 waters</i>	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B (CW1) waters	
Lakes or streams draining to lakes <i>Class B (CW2) waters</i>	50 30
Wetlands <i>Class B (WW) waters</i>	35 30
Streams <i>Class B (LW) waters</i>	30 35
Publicly owned lakes (and streams draining to publicly owned lake) <i>Class B (LR) waters</i>	50 25
Other lakes	30

ITEM 11. Amend subrule **91.11(1)**, paragraph "a," as follows:

a. Use classification of receiving waters. This category addresses the receiving water use classification that would be improved or protected by the proposed project. Points shall be awarded for only one use: the applicable use or classification with the highest point value and shall be cumulative for all designated use classifications of the receiving stream.

Use and Classification	Points
Outstanding national resource waters (proposed water use)	50
High quality waters	40
High quality resource waters	10 20
Class A waters	
Lakes or streams draining to lakes <i>Class A1 waters</i>	60 50
Streams <i>Class A2 waters</i>	45
Urban streams <i>Class A3 waters</i>	45
Cold water streams	50
Losing streams and karst topography	40
Class C (waters used as a drinking water supply)	40
Class B (CW1) waters	
Lakes or streams draining to lakes <i>Class B (CW2) waters</i>	50 30
Wetlands <i>Class B (WW) waters</i>	35 30
Streams <i>Class B (LW) waters</i>	30 35
Publicly owned lakes (and streams draining to publicly owned lake) <i>Class B (LR) waters</i>	50 25
Other lakes	30

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ITEM 12. Rescind 567—Chapter 92 and adopt the following **new** chapter in lieu thereof:

CHAPTER 92

CLEAN WATER STATE REVOLVING FUND

567—92.1(455B) Statutory authority. The authority for the Iowa department of natural resources to administer the clean water state revolving fund (CWSRF) to assist in the construction of wastewater treatment facilities and water pollution control projects is provided by Iowa Code sections 455B.291 to 455B.299.

567—92.2(455B) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As a part of that general responsibility, the department and the Iowa finance authority are jointly delegated the administration of: (1) the clean water state revolving fund (CWSRF) to assist in water pollution prevention and abatement and water quality protection projects pursuant to the Clean Water Act, and (2) the drinking water facilities revolving loan fund (DWSRF) described in 567—Chapter 44. A project must comply with this chapter to be eligible for a CWSRF loan. This chapter provides the general rules of practice for the department's administration of the CWSRF program, including the criteria for loan eligibility, and the general project and program administration rules. Definitions provided in 567—Chapter 90 apply to this chapter.

Section 603(c) of Title VI of the Clean Water Act allows the use of state revolving funds to assist municipalities to construct publicly owned treatment works and to implement a nonpoint source pollution management plan as provided for in Section 319 of the Clean Water Act. Nonpoint source water quality programs are described in 567—Chapter 93.

Water pollution control projects that provide the best water quality improvements or protection based on the rating system and are ready to proceed are to be funded. This chapter provides for the general rules of practice for the department's administration of the CWSRF program based on this principle.

567—92.3 Reserved.

567—92.4(455B) General policy. Loans of up to 100 percent of the eligible costs of water pollution control projects will be made available pursuant to the requirements of these rules, rules established by the authority, and Title VI of the Clean Water Act.

92.4(1) Administration. The department, in conjunction with the authority, has been delegated the responsibility of administering the CWSRF program and the DWSRF program described in 567—Chapter 44. The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

The department may enter into agreements with other private, public or quasi-public agencies to assist with the implementation of the CWSRF program.

92.4(2) Set-aside funding. Consistent with the pollution sources identified in the department's nonpoint source management program, set-asides will be used to target assistance to nonpoint source activities that are contributors of pollutants to Iowa's waters. Set-asides will be used for assisting construction of water pollution control facilities for livestock operations, local water protection projects, onsite wastewater management systems and general nonpoint source projects. The amount for each set-aside will be determined in the intended use plan.

92.4(3) Decisions. Decisions of department staff are final unless the recipient files a written petition for review with the director. The petition must be addressed to the director and clearly state the decision in question and the basis for the requested review. The recipient has the right to appeal a decision to the commission pursuant to Iowa Code chapter 17A or to the state court.

92.4(4) Reserved.

92.4(5) Fundable project determination. Projects or activities qualifying for CWSRF assistance shall be identified in the IUP. Only those projects or activities on the state project priority list developed pursuant to 567—Chapter 91 may be considered fundable. CWSRF assistance will be available to point source projects in priority order. Funding for nonpoint source activities will be established in the intended use plan.

92.4(6) State capitalization grant. The Clean Water Act authorizes the Environmental Protection Agency (EPA) to offer capitalization grants to states for use in a revolving fund loan program. A portion of the capitalization grant, as allowed by Title VI of the Clean Water Act, will be used to administer the CWSRF program.

92.4(7) Federal funding coordination. Projects may use CWSRF funds to complete the financing projects partially funded by other federal programs such as Environmental Quality Incentives Program and Community Development Block Grants. Projects that have received a federal construction grant under provisions of the Clean Water Act are not eligible to receive a loan for the nonfederal share of the project.

567—92.5 Reserved.

567—92.6(455B) Intended use plan management.

92.6(1) Intended use plan preparation.

a. Development. The department shall prepare an intended use plan (IUP) at least annually and on a quarterly basis as needed. The IUP will be subject to a public hearing and approved by the commission.

b. Notification. A public hearing process is part of the IUP adoption process to provide opportunity for public participation. Notice is published in a newspaper of general circulation prior to the public hearing, and an announcement is released to television and radio stations. A general notice is also made to all applicants and interested agencies and organizations. The notice explains the purpose of the IUP and how additional information may be obtained.

c. Comments. Comments regarding the proposed IUP will be accepted during the notice period, at the public hearing and in writing for five days following the public hearing. After evaluation of all pertinent comments, the IUP will be revised, if necessary, and recommended for approval by the environmental protection commission. Subsequent approval by the EPC will establish the IUP to be used for loan assistance.

92.6(2) Contents. The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following:

a. State project priority list. The state project priority list contains the projects and set-asides eligible for CWSRF loans. The state project priority list will include, for point source projects, the name of the eligible applicant, any applicable NPDES permit number and the projected amount of loan assistance. For nonpoint source set-asides, the IUP will include the name of the participant.

b. Fundable list. The fundable list includes projects scheduled for loans from funds available during the fiscal year. Projects will be considered in priority order for place-

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ment on the fundable list. Subsequent segments of a project which has been awarded financial assistance for Category I and Category II needs will be placed on the fundable list ahead of other new projects whose schedules also would allow funding during the fiscal year. The fundable lists of point source projects and nonpoint source set-asides shall be listed in priority order and shall include a schedule of estimated disbursement of funds, preliminary identification of point source projects that may undergo an environmental impact statement, and the need category(ies) of the projects. The department will consider the following in developing the list of fundable projects for the intended use plan:

- (1) How the project conforms to the short- and long-term goals of the CWSRF;
- (2) The priority rating of the point source project;
- (3) Whether a point source project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;
- (4) Whether the proposed project addresses the need upon which the eligible entity's priority is based;
- (5) The eligible entity's financial capability to service the loan, to provide operation and maintenance, to provide replacement reserves, and, if required, to provide debt service reserves;
- (6) The eligible entity's statement of willingness to accept all loan terms and conditions;
- (7) The funds available, department priorities and the administrative capacity of the department; and
- (8) The applicant's conformance to process guidelines provided by the department.

c. Contingency list. A contingency list will be included so that point source projects on the contingency list could become fundable should a fundable project not proceed in a timely manner.

d. Goals. The IUP will include the long- and short-term goals of the CWSRF.

e. Supported activities. The IUP will include information on the types of activities to be supported by the CWSRF. The IUP will identify any funds to be directed to the nonpoint source set-asides to implement Iowa's nonpoint source management program.

f. Assurances. The IUP will include assurances and specific proposals on how the state intends to meet requirements of the following sections of the Clean Water Act:

- (1) 602(a) Environmental reviews;
- (2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt; and
- (3) 602(b)(4) Certify that all funds in the CWSRF will be expended in an expeditious and timely manner.

g. Rates, terms and fees. Loan interest rates and terms, interest rates and terms for linked deposit programs, and loan origination fees and servicing fees will be established in the IUP.

h. Amendments. The IUP will include the method to be used by the department if the IUP is amended.

i. Consistency with water quality management plans. Projects must be consistent with any Iowa water quality management plans in order to be considered for inclusion on the state project priority list.

92.6(3) Priority for loan assistance. A fundable project must be technically and administratively complete. A community is responsible for complying with the technical procedures for facility planning and preparation of plans and

specifications, including department approval of those documents.

92.6(4) Annual update. The state project priority list will be reviewed at least annually or quarterly as needed to update schedules and project cost estimates.

92.6(5) Notification of revisions. The department will notify, in writing, all communities that are removed from or placed on an approved fundable list based on revisions.

92.6(6) Special considerations. Exemptions to the point source rating criteria may be considered by the department and funding variances may be granted by the commission for projects that have unique or unusual circumstances but that do not logically fit into the criteria. The commission may grant interest rate reductions or other favorable loan incentives to applicants that sponsor a project that improves impaired waters or restores the physical, chemical or biological integrity of receiving waters impacted by the wastewater treatment facility. Exemptions to the nonpoint source rating criteria may be considered by the department and funding variances may be granted by the commission for projects that have unique or unusual circumstances which may not logically fit the criteria and are consistent with the short- or long-term goals of the IUP. Examples of projects that may qualify for exemptions and variances are projects targeted to improve impaired waters or projects where the purchase of land or conservation easements by conservation agencies is targeted to improve impaired waters.

567—92.7(455B) Point source project procedures.

92.7(1) Application forms. An applicant may request an application package from the department. The applicant shall complete the application for CWSRF loan assistance and shall provide the required documentation on the project. Forms may be obtained from the Environmental Services Division, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034. Forms may also be downloaded from www.iowasrf.com.

92.7(2) General requirements. In addition to completing the application and providing documentation required in 92.7(1), the applicant must include the following items in a complete CWSRF loan application for point source projects:

- a. Two copies of the facility plan. The facility plan shall be certified by a professional engineer licensed to practice in Iowa and shall be in conformance with Chapter 11 of the Iowa Wastewater Facilities Design Standards (567—paragraph 64.2(9)“b”);
- b. A schedule for submission of plans and specifications for the project; and
- c. A project construction schedule.

92.7(3) Timing.

a. All applications received by the department for eligible projects will be given a score using the rating criteria in 567—Chapter 91 and will be placed on the state project priority list. Applications may be submitted on an ongoing basis.

b. Applications received after the drafting of the IUP will not be placed on the state project priority list but will be considered for loan assistance when the next IUP is prepared.

92.7(4) Project initiation conference. The department may require the applicant or the applicant's representative to meet at a location designated by the department. The eligible applicant's official representative (and usually the applicant's consultant) will meet with the department to discuss:

- a. CWSRF program policies, procedures, and guidelines;
- b. Allowable costs;

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- c. Wastewater treatment alternatives and technologies;
- d. Environmental impacts and review considerations;
- e. Public participation;
- f. Scheduling; and
- g. Other information as needed.

92.7(5) Review criteria for point source projects. The department shall review CWSRF applications from eligible applicants and verify the following items:

- a. The project is on the state project priority list;
- b. The applicant has prepared an adequate facility plan report;
- c. The project will be in conformance with any applicable areawide water quality management plans;
- d. The applicant has adopted or will adopt an acceptable user charge system;
- e. The applicant has demonstrated its ability to provide the necessary legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance. If the department has reasonable grounds to believe that an applicant's wastewater treatment facilities are not viable, the department may require the applicant to submit management and financial plans as prescribed in Iowa Code section 455B.174; and
- f. The applicant has provided an acceptable project schedule for project initiation and completion.

92.7(6) Allowable and unallowable costs. Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient completion of the project. Unallowable costs include the following:

- a. Cost of the nonfederal share of any project funded by an EPA grant under the provisions of the Clean Water Act;
- b. Cost of service lines and in-house plumbing;
- c. Administrative costs of the recipient;
- d. Purchase of vehicles and tools;
- e. Land purchase and easement or rights-of-way costs;
- f. Pretreatment program development costs unless required by federal regulations; and
- g. Operation and maintenance costs.

92.7(7) Audit and inspection. The recipient shall provide access at all times for the department, the authority, the state auditor, and the U.S. EPA Office of the Inspector General to all project records and documents for inspection and audit purposes for a period of three years after the date of last loan payment. The same access to the project site(s) shall be provided for inspection purposes.

92.7(8) Cross-cutting laws. Other federal and state statutes and programs may affect a CWSRF project.

567—92.8(455B) Point source project requirements. All wastewater treatment system projects receiving assistance from the CWSRF which entered into binding loan commitments on or after October 1, 1994, and did not initiate construction of the projects in whole or in part prior to October 1, 1994, shall meet the following requirements:

92.8(1) Planning. The planning phase of a project consists of those necessary plans and studies which directly relate to facilities needed to comply with enforceable requirements of the Clean Water Act and state statutes. This phase consists of a systematic evaluation of alternatives that are feasible considering the unique demographic, topographic, hydrologic, and institutional characteristics of the planning area. Facilities planning must support selection of the proposed alternative. The planning phase must include the following:

- a. Facility plan. The facility plan must contain a description of the proposed project and the complete system of which it is a part. The facility plan must be prepared in accor-

dance with Chapter 11 of the Iowa Wastewater Facilities Design Standards, and meet the applicable provisions of this subrule.

b. Environmental review. Loan recipients shall conduct environmental review of projects using procedures in 40 CFR Part 6, July 1, 2002, as a part of facility planning. The applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 requirements, or whether a finding of no significant impact or an environmental impact statement is required. In conjunction with the facility planning process as described in 40 CFR 35.2030(c), July 1, 2002, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 2002, pertaining to Procedures for Implementing the Requirements of the Council on Environmental Quality of the National Environmental Policy Act, is hereby adopted by reference and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with references to the department for the purposes of this chapter.

92.8(2) Point source project design and construction. The project design and construction phase must include the following:

a. Recipient capability. The recipient must demonstrate to the department that it has the legal, institutional, managerial and financial capability to ensure adequate construction, operation and maintenance of treatment works.

b. Minority business enterprise/women's business enterprise (MBE/WBE). The recipient must comply with requirements of MBE/WBE participation as found in 40 CFR 31.36(e), July 1, 2002. The director will negotiate with the EPA regional administrator to determine the overall "fair share" objective for CWSRF loan-assisted projects. The recipient shall take the following affirmative steps to ensure that small, minority, and women's business enterprises are utilized where possible as sources of supplies, construction, and services:

(1) Placing qualified small, minority, and women's business enterprises on solicitation lists;

(2) Ensuring that small, minority, and women's business enterprises are solicited whenever they are potential sources;

(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of small, minority, and women's business enterprises;

(4) Establishing delivery schedules, where requirements of the work allow, which encourage participation by small, minority, and women's business enterprises;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and

(6) Requiring prime contractors to take the affirmative steps listed above when awarding subcontracts.

c. Site. When it is necessary that real property be acquired as part of the project and within the project period, the recipient may be required to submit documentation of the acquisition, including the legal description, the date the property was acquired, and an appraisal report by a qualified appraiser. If required, submittal to the department is to occur prior to contract award.

d. Project changes. Prior to final loan disbursement, the recipient must submit to the department for approval all modifications to the project including changes to the plans and specifications and changes in the contract (change orders). The recipient is responsible for any costs or actions

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necessary should the changes be implemented prior to departmental review and subsequently found to be unapprovable.

e. State inspections. Personnel of the department shall have the right to examine all construction aspects of the project, including materials and equipment delivered and stored on site for use on the project.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.299.

ITEM 13. Rescind 567—Chapter 93 and adopt the following **new** chapter in lieu thereof:

CHAPTER 93

NONPOINT SOURCE POLLUTION CONTROL
SET-ASIDE PROGRAMS

567—93.1(455B,466) Statutory authority. The authority for the Iowa department of natural resources to administer the clean water state revolving fund (CWSRF) to assist in the construction of wastewater treatment facilities and water pollution control projects is provided by Iowa Code sections 455B.291 to 455B.299.

567—93.2(455B,466) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As part of that general responsibility, the department and the Iowa finance authority are jointly delegated the administration of the CWSRF. Definitions provided in 567—Chapter 90 apply to this chapter.

567—93.3(455B,466) Purpose. Iowa's nonpoint source management plan identifies several sources of nonpoint source pollutants. In addition to assisting publicly owned treatment works, it is the intent of the commission to set aside a portion of the CWSRF for the purpose of making low-interest loans for nonpoint source water pollution control projects. Four separate set-asides are identified as follows:

93.3(1) Onsite wastewater treatment and disposal systems fund. The purpose of this fund is to assist rural homeowners to rehabilitate or improve existing onsite wastewater treatment and disposal systems.

93.3(2) Livestock water quality facilities set-aside. The purpose of the set-aside is to assist owners of existing animal feeding operations to meet state and federal requirements. Projects may be selected using the rating and ranking process in 567—Chapter 91.

93.3(3) Local water protection projects set-aside. The purpose of the set-aside is to assist local water protection projects that will provide water quality improvement or protection. Projects may be selected using the rating and ranking process in 567—Chapter 91.

93.3(4) General nonpoint source project assistance set-aside. The purpose of the set-aside is to assist general nonpoint source projects that will provide water quality improvements or water quality protection. This set-aside allows for funding of the water quality protection portion of nontraditional projects. Projects may be selected using the rating and ranking process in 567—Chapter 91.

567—93.4(455B,466) Onsite wastewater system assistance program.

93.4(1) Onsite wastewater assistance fund. The onsite wastewater assistance fund (OSWAF) is a separate fund within the state treasury. The OSWAF is a revolving loan fund used to provide low-interest loans to homeowners for improving and rehabilitating onsite wastewater treatment systems and consists of two accounts: a financing account

and an administration account. Funds deposited in the OSWAF consist of state-appropriated funds, annual capitalization grants provided under Title VI of the federal Clean Water Act, equity fund moneys, loan repayments, interest accrued on funds, and all other moneys specifically designated for use in the OSWAF. The amount to be set aside for the OSWAF is identified in the annual intended use plan.

93.4(2) Eligibility and restrictions for participation in the onsite wastewater treatment system assistance program. Assistance under the onsite wastewater treatment system assistance program shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF. The following eligibility conditions and restrictions apply to such assistance.

a. Location restrictions. Assistance is available for the improvement or rehabilitation of onsite wastewater treatment systems located outside of corporate boundaries. Assistance cannot be provided for improvements to or rehabilitation of onsite systems located within incorporated limits.

b. County eligibility. Assistance shall be provided only for systems located in counties that have an environmental health program meeting minimum standards for onsite sewage systems. The department shall maintain for public record a list of all counties meeting such standards. At a minimum, counties must carry out statutory responsibilities as provided in Iowa Code section 455B.172 as well as provide for the following measures. The department will adopt guidance in cooperation with county boards of health to evaluate the adequacy of county programs.

(1) Proper site evaluations to determine the appropriate design and size of onsite wastewater treatment systems prior to permitting and installation.

(2) Inspection of onsite systems by a qualified inspector at the time of renovation or construction.

(3) Enforcement of existing monitoring requirements, in accordance with rule 567—69.2(455B), for existing, permitted onsite systems with secondary treatment which discharge aboveground, such as those authorized by NPDES General Permit No. 4 in rule 567—64.6(455B).

(4) Assurance of regular system maintenance and monitoring for the life of the loan for those systems receiving assistance under the onsite wastewater systems assistance program.

c. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the repair, rehabilitation, or replacement of an onsite treatment system needed to meet state or local standards for onsite systems. Eligible costs include all costs directly related to the design, permitting and construction of an onsite wastewater treatment system. Eligible costs include the removal of existing structures, such as septic tanks, earth moving or any land purchases directly related to proper wastewater treatment. Eligible costs do not include additional earthwork, reseeding, replanting, or any other aesthetic improvements. Maintenance or monitoring costs are not considered eligible costs. Eligible costs must be incurred within one year of the issuance of the onsite construction permit by the county.

d. Applicant eligibility. Assistance is limited to applicants who meet the applicable provisions of 567—Chapter 69 and all other local provisions for the siting and construction of onsite wastewater treatment and disposal systems and who demonstrate to the satisfaction of the participating lending institution that the applicants can repay the loan.

e. Project eligibility. Assistance can be provided only for the repair, rehabilitation, or replacement of existing onsite wastewater treatment and distribution systems. Assis-

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tance is not available for new housing. A system serving an equivalent of 16 individuals or more (with an average daily flow of 1500 gallons or more) is considered a public system (requiring permitting by the DNR) and is not eligible under this program.

f. Property eligibility. As a qualification of eligibility for the loan program, the department may set a limit on the assessed valuation of the dwelling or building served by the onsite wastewater system needing renovation.

93.4(3) Participating lending institutions. Any lending institution as defined in rule 90.2(455B) is eligible to participate in the program by signing an agreement with the department or its financial agent. The agreement will contain the responsibilities of the department to the participating lending institution and vice versa as well as relevant loan conditions and restrictions. The department will provide the format of the agreement. The department or its financial agent will maintain for public record a list of participating lending institutions.

a. Responsibilities of the department to participating lending institutions. For participating lending institutions, the department or its financial agent will:

(1) Provide materials such as pamphlets, brochures, loan application forms and other relevant materials necessary to inform applicants about the program and to assist lenders in completing the loan process.

(2) Ensure the timely transfer of funds in accordance with the terms and conditions set forth in the agreement between the department and the lending institution.

b. Responsibilities of participating lending institutions to the department or its financial agent. The responsibilities of participating lending institutions include:

(1) Making a determination of whether a loan can be secured.

(2) Rendering a judgment on the applicant's ability to repay the loan.

(3) Approving or denying the loan application. The lending institution may approve a loan agreement when it is determined that the application complies with the requirements of this chapter. The loan agreement between the applicant and the lending institution shall be a binding obligation under Iowa law and shall include loan terms and conditions for the loan period. The state and the department are not liable to an eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible borrower.

(4) Notifying the department or its financial agent of a loan to reserve funds for the onsite system improvements funded by the loan.

(5) Notifying the department or its financial agent when the onsite system improvements funded by the loan are completed and inspected. The department or its financial agent will then make a linked deposit equal to the amount of the loan in the form of a certificate of deposit to the lending institution. The lending institution will then service the loan with the linked deposit.

(6) Notifying the department, after a reasonable attempt has been made to collect delinquent payments, when a loan has been in default for 90 days.

93.4(4) Onsite wastewater assistance fund financial agent. To assist the department in administering the onsite wastewater treatment system assistance program, the department may appoint a financial agent responsible for managing the funds in the OSWAF. The responsibilities of the financial agent shall be provided in an agreement between the department and the agent. The responsibilities of the financial agent may include:

a. Developing a management plan for the OSWAF. The management plan shall determine how the fund will be managed to provide the lowest interest loans while maintaining financial security and ensuring the perpetuity of the fund. Included in the management plan shall be the methods and terms for transfer of funds from the OSWAF to participating lending institutions and repayment of funds thereto.

b. Reserving loan funds equal to the amount of the loan as each loan is approved by participating lending institutions.

c. Distributing funds to lending institutions as stipulated in agreements with lending institutions.

d. Acting as liaison between the department and the lending institutions.

e. Maintaining for public record a list of participating lending institutions.

f. Reporting financial information pertaining to the OSWAF.

93.4(5) Applying for assistance. Prior to applying for a loan from a participating lending institution, an eligible individual or entity must receive approval of the proposed improvements from the county in which the onsite wastewater treatment system is located.

a. County requirements for individual applicants. Applicants requesting county approval shall submit forms provided by the county which include:

(1) A description of the type and general specifications of the proposed work.

(2) Project cost estimate(s).

(3) A proposed construction schedule.

b. County requirements for cluster system applicants. Applicants seeking financial assistance for cluster systems using onsite technology must include with their application to the county:

(1) A description, if available, of each participating property owner's current onsite wastewater treatment system, including a discussion of existing and potential problems or failures in the current treatment scheme.

(2) An estimate of the population and number of households to be served.

(3) A rationale for the proposed design of the new treatment system.

(4) Descriptions of the management entity and program.

c. County review. The county shall review applications to determine if the proposed work meets the applicable provisions of 567—Chapter 69 and all other relevant local provisions for the siting and construction of onsite wastewater treatment and distribution systems. For proposed projects that meet relevant criteria, the county shall issue a permit or certificate. The county permit or certificate shall be accompanied by a cost estimate and proposed construction schedule. A county may deny an application for reasons of noncompliance with applicable state and local criteria. Written notification of the denial shall be provided to the applicant and shall state the reason(s) that the application was denied.

d. Lender requirements for applicants. The applicant for a loan shall submit to a participating lending institution an application form as prescribed by the department of natural resources or deemed acceptable by the department's financial agent. Also, the applicant shall include a copy of the county permit or certificate approving the proposed project. The applicant is obligated to provide any other specific information the lender may deem necessary.

e. Loan application processing and disbursement of funds. The process for awarding and managing loans shall be in full accordance with the terms established by the depart-

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ment or its financial agent(s) and the provisions of this chapter.

(1) Loan approval or disapproval. Upon receipt of a completed loan application form with relevant information as described in 93.4(5)“d,” the participating lending institution shall either approve or deny the loan within ten working days. The lending institution shall notify the applicant of loan conditions and limitations at the time of initial application. Before acting on the loan application, the lending institution shall ensure that adequate OSWAF funds are available. If the loan is approved, the lending institution shall notify the loan applicant in writing that the loan has been approved and notify the department’s financial agent within two working days of approval of the loan application in order to reserve funds in that amount to ensure that adequate funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant in writing, clearly stating the reasons for denial. Reasons for denial may include that funds are not available or that the applicant presents an unacceptable level of loan risk.

(2) Disbursement of funds. Upon completion of the onsite wastewater treatment system improvements, the loan applicant shall furnish the lender with copies of all bills relating to the costs of the improvements which were preapproved on the loan application as specified in 93.4(2)“c,” and certification from the county that the improvements were accomplished in accordance with the approved plans and meet relevant state and local requirements for onsite wastewater treatment systems. The loan shall be subject to the conditions and limitations provided in 93.4(5)“f.” If actual costs are less than the amount requested on the loan application, then the actual loan amount will equal those costs. The lending institution is authorized to execute a loan for a principal of up to 10 percent above the amount of the loan application if costs exceed the application amount. In this case, the loan applicant shall provide the lending institution with a written explanation for any cost overruns.

f. Loan conditions and limitations.

(1) Loan amount and period. The minimum loan granted under this program shall be \$2,000. The loan period shall not exceed ten years. Loans shall be made contingent on the availability of funds from the OSWAF.

(2) Number of loans. There will be no limit to the number of loans an applicant may receive. Each approved application will be handled as a new loan.

(3) Loan execution. The loan agreements to be executed by the applicant and the lending institution shall be a binding obligation under Iowa law, include conditions and terms to be effective for the loan period, and be accompanied by evidence of satisfactory security, legality, and enforceability.

(4) Eligible costs. All costs directly related to the design, permitting, construction, and financing of the onsite wastewater treatment system are eligible for loans. Eligible costs include the removal of existing structures, such as abandoned septic tanks, earth moving or any land purchases directly related to proper wastewater treatment. Eligible costs do not include additional earthwork, reseeding, replanting, or any other aesthetic improvements. Maintenance or monitoring costs will not be allowed as part of the loan. Eligible costs must be incurred within one year of the issuance of the septic construction permit.

(5) Recipient record keeping. The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector

General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

(6) Site access. The loan recipient shall agree to provide the department and the administrative authority access to the construction site to verify that the loan was used for the purpose intended and that the constructed works meet applicable state and local environmental requirements and ordinances for onsite wastewater treatment systems. The loan recipient also shall agree to provide access to the onsite system for periodic monitoring by the department and administrative authority, at times mutually agreed upon with the system owner, for the duration of the loan.

(7) Loan termination. The department or its financial agent(s) shall have the right to terminate any loan when terms of the agreement have been violated.

(8) Repayment. Loans shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayment of the loan must begin no later than 30 days after the date specified in the selected repayment schedule.

(9) Interest. The loan interest rate shall not exceed 3 percent per year. The actual interest rate charged shall be in accordance with the participating lending institution’s agreement with the department or its financial agent.

(10) Prepayment. Prepayment of the principal in whole or in part shall be allowed without penalty.

(11) Property transfer. In the event of a property transfer from the original landowner who secured the loan to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be due in full.

(12) Loan delinquency. Failure of the loan recipient to repay the loan in accordance with the schedule contained in the loan agreement will result in the loan’s being declared in default. For a loan delinquent more than 90 days, the interest rate shall accelerate immediately to the current legal usury limit, shall be applied to the entire unpaid principal, and shall be prorated for the period for which the installment is delinquent.

93.4(6) Rectification. Failure of an onsite wastewater treatment system to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapter 69 constitutes grounds for the administrative authority to withhold authorization of loan disbursements to the loan recipient. The loan recipient is responsible for ensuring that the identified problem is rectified. Once the deficiency is corrected, the loan funds can be released.

93.4(7) Disputes with the administrative authority. A person or entity that disagrees with the withholding of loan funds may request a formal review of the action. The person or entity must submit a request for review in writing to the director within 30 days of the date of notification action.

93.4(8) Priority allocation of funds and intended use plan. The department shall, on an annual basis, prepare a plan describing the amount of funding available for loans under the program for the coming state fiscal year. The plan shall also identify those counties qualified to participate in the program and provide an estimate of the loan funds needed in those counties within the coming year. To the extent that the pool of funds available for lending involves funds controlled by Title VI of the federal Clean Water Act, this plan shall be incorporated into the annual intended use plan authorized in 567—Chapter 92.

93.4(9) Targeted assistance. The department may set aside a portion of the annual available funds identified in the

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IUP for financing onsite wastewater treatment systems in targeted areas. Such targeted areas may include impaired watersheds, high-density housing areas, agricultural drainage areas, or other environmentally sensitive or degraded areas where the repair and rehabilitation of onsite wastewater treatment systems are needed to preserve and protect water quality. The annual intended use plan shall specify the need for targeted assistance, the areas covered, and the estimate of funds needed to address the water quality problems.

567—93.5(455B) Livestock water quality facilities requirements.

93.5(1) Livestock water quality facilities assistance. Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions or in other manners as specified in an agreement with a pass-through loan recipient. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control as required by the department.

c. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of August 2005 do not allow assistance for concentrated animal feeding operations or assistance for animal feeding operations that will become concentrated animal feeding operations as a result of the project.

Loans will be made only to livestock producers that are operators of record and have legal control of the property containing the animal feeding operation for the duration of the loan.

d. Project eligibility. The water pollution control facilities considered eligible for assistance include: lagoons, waste treatment and equipment, including but not limited to land used as part of the waste treatment system, storage or holding structures, composters, pipes, pumps, agitation equipment, fencing around lagoons, water systems used to flush water in waste treatment systems, irrigation systems, tank wagons, manure spreaders, waste collection and processing equipment (including without limitation tank trucks, loaders, skid loaders, and waste irrigation equipment), recycle pumps, portions of feeding floors and loafing areas used for waste collection, tractor blades used for scraping waste, vegetative filters, filter strips, water and sediment control basins, contour buffer strips, diversions, fencing and cross fencing along with any associated watering facilities, and other similar structures, equipment or water pollution abatement activities as may be found in approved manure management plans or comprehensive nutrient management plans, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog-confinement facility (such as a slated floor) shall be excluded. Assistance for development of comprehensive nutrient management plans, as defined by the USDA Natural Resource Conservation Service, is eligible. Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is

identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake.

93.5(2) Applying for assistance. Application for project approval shall be made on forms provided by the department or its agent.

93.5(3) State review and approval. Prior to receiving assistance, a livestock producer shall submit to the department complete plans and specifications of the facilities to be constructed and a complete list of all waste or nutrient management documents to be developed. The department will review the plans and specifications for compliance with design standards. Once the plans and specifications are determined to meet the design requirements and manure and waste control needs of the animal feeding operation, the department will issue a letter of project approval or construction permit (whichever is applicable) to the livestock producer. Other forms of project approval will be accepted as determined by the department.

93.5(4) Duration of the project. The project is to be maintained, kept in place or operated as proposed for the life of the loan.

93.5(5) Comprehensive nutrient management plan required. The livestock producer shall have a comprehensive nutrient management plan prepared by a certified planner or, as part of the loan, develop a comprehensive nutrient management plan to be eligible for the loan.

93.5(6) Eligible costs. All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development of a comprehensive nutrient management plan are eligible costs.

93.5(7) Ineligible costs. Costs for development of new animal feeding operations or any animal feeding operation for which construction was initiated on or after December 31, 2001, are not eligible costs. Assistance may be available for replacement animal feeding operations which will eliminate an existing animal feeding operation that is identified as impacting a Section 303(d) listed stream or is documented as causing or contributing to a water quality impairment or will eliminate a documented pollutant source from a cold water stream or publicly owned lake. Costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs for the purchase of land to be used for application of wastewater or manure are not eligible costs. Costs for operation and maintenance or updating a comprehensive nutrient management plan are not eligible costs. Refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost.

93.5(8) Site access. The livestock producer shall agree to provide the department and the department's agent access to the construction site to verify that the loan was used for the purpose intended and that the construction work meets the applicable state and federal requirements for animal feeding operations. The livestock producer also shall agree to provide the department periodic access to the animal feeding operation for the duration of the loan to ensure that the constructed facility is being operated and maintained as designed.

93.5(9) Interest rate. The loan interest rate shall be established annually in the IUP. The loan interest rate is not to exceed the prevalent interest rate and will take into account the

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administration cost of the livestock water quality facilities set-aside.

567—93.6(455B) Local water protection project requirements.

93.6(1) Local water protection project assistance. Assistance under the CWSRF shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. Local water protection projects to be carried out in watersheds with Section 303(d) waters, waters determined to be impaired in the Section 305(b) report, or watersheds with approved management plans or total maximum daily load implementation plans are to be given a higher priority for funding. See 567—91.10(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the practices required to provide water quality improvements or protection as identified in an approved watershed management plan or in a total maximum daily load implementation plan prepared by the department.

c. Applicant eligibility. Assistance is available to any person who owns land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record of the property where the local water protection projects are to be installed. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.

NOTE: Current federal laws and rules as of August 2005 do not allow assistance for concentrated animal feeding operations or assistance for animal feeding operations that will become concentrated animal feeding operations as a result of the project.

d. Eligible practices. The local water protection practices that are considered eligible include, but are not limited to, composting facility, contour buffer strips, diversion, fence, field border, field windbreak, filter strip (with trees, shrubs), filter strip (waste treatment), grade stabilization structure, grassed waterway, pasture and hayland planting, planned grazing system, pond, riparian forest buffer, sediment basin, terrace, underground outlet, waste management system, waste storage facility, waste treatment lagoon, water and sediment control basin, and other practices that are shown to improve or protect water quality.

93.6(2) Applying for assistance. Application for project approval shall be made on forms provided by the department or its agent.

93.6(3) Local review and approval. Prior to receiving assistance, the applicant shall submit an application to the local soil and water conservation district. The local soil and water conservation district will evaluate the application, provide an estimated cost, and certify that the practice is compatible with state water quality goals.

93.6(4) Duration of the project. The project is to be maintained, kept in place or operated as proposed for the life span of the practice, but in no case for less than the life of the loan.

93.6(5) Eligible costs. All costs directly related to the implementation of local water protection projects approved in the memorandum of project approval are eligible costs. A local water protection project for an animal feeding operation for which the loan amount is \$50,000 or less is eligible for

this set-aside on the condition that the applicant has a manure management plan.

93.6(6) Ineligible costs. Costs for the purchase of land are not eligible costs.

93.6(7) Site access. The applicant shall agree to provide the department or the department's agent access to the project site to verify that the loan was used for the purpose intended.

567—93.7(455B) General nonpoint source project requirements.

93.7(1) General nonpoint source assistance. Assistance under the CWSRF general nonpoint source (GNS) set-aside shall be in the form of low-interest loans made directly or by participating lending institutions through a linked deposit arrangement with the CWSRF. The following eligibility conditions and restrictions for participation apply to such assistance.

a. Location preferences. General nonpoint source water pollution control projects will be rated according to rule 567—91.11(455B).

b. Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities or practices required to provide water quality improvements, restoration or protection. Participation in nontraditional projects where the primary purpose is not water quality protection or improvement will be limited to the portion of the project that is directly related to water quality improvement, restoration or protection.

c. Applicant eligibility. Assistance is available to projects for which facilities are needed to protect, restore or improve water quality from nonpoint source pollution. Only applicants that are owners of record of the property or have long-term control of the property where the project is to be implemented are eligible. In applications where the water pollution control project is a plan or document that will direct water quality protection or improvement efforts, loans will be made to applicants that have the capacity and capability of implementing the plan and repaying the loan.

d. Project eligibility. Eligible general nonpoint source projects include, but are not limited to, agricultural well sealing, urban sedimentation basins, construction of wetlands and riparian lands, restoration of habitat, stream bank restoration and stabilization, remediation of underground storage tanks, remediation of aboveground storage tanks, urban storm water runoff best management practices and management facilities, sediment traps, wetland flood prevention areas, water conservation and reuse, and development of environmental management systems. Nontraditional nonpoint source projects that may have a water quality protection or improvement component include, but are not limited to, bird sanctuaries and wildlife enhancement projects, brownfield remediation, environmental insurance for brownfield remediation, vegetative plants, street sweepers and leaf removal equipment, closure of municipal landfills, salt storage sheds, sediment removal, wetland mitigation bank and education programs.

93.7(2) Applying for assistance. Applications for assistance from the GNS set-aside shall be submitted to the department at Environmental Services, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034. Application forms will be provided by the department. Applications shall include an explanation of how the water quality will be protected, improved or restored by the proposed project. Applications will be accepted on a continuous basis.

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93.7(3) Rating and ranking. Using information included in the application, the department will rate and rank the projects. The department will identify the highest rated projects and provide the applicant a memorandum of approval for the proposed water pollution control project. The department will earmark the set-aside funds for the water pollution control projects to be funded. These funds will be available for six months after the IUP is approved in order for the applicant to complete the loan with a lending institution.

93.7(4) Eligible costs. All costs directly related to the implementation of the project approved in the memorandum of approval are eligible costs.

93.7(5) Ineligible costs. Costs for livestock water quality facilities are not eligible under this set-aside and are provided for in rule 567—93.5(455B). Costs for the purchase of land are not eligible costs unless specifically approved by the commission.

93.7(6) Site access. The recipient shall agree to provide the department and the department's agent access to the project site to verify that the loan was used for the purpose intended.

These rules are intended to implement Iowa Code sections 455B.291 to 455B.299, 466.8 and 466.9.

ARC 4771B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455A.6 and 459.103, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The proposed amendment will establish a list of designated wetlands in a new document which will be available at the State Law Library and via the Internet. The definition of “designated wetland” in Iowa Code subsection 459.102(21) was utilized in determining the wetlands that should be designated.

Any interested person may make written comments or suggestions on or before February 1, 2006. Comments should be directed to Gene Tinker, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail gene.tinker@dnr.state.ia.us. The list of proposed designated wetlands may be obtained from Mr. Tinker or from the Department's Web site at: <http://www.iowadnr.com/epc/05nov/7.pdf>.

Public hearings will be held as follows:

January 19, 2006 6:30 p.m.	Spirit Lake Public Library 702 16th Street Spirit Lake, Iowa
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January 25, 2006 6:30 p.m.	Lime Creek Nature Center 3501 Lime Creek Road Mason City, Iowa
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January 26, 2006 6 p.m.	Ottumwa Public Library 129 N. Court Ottumwa, Iowa
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January 31, 2006 2:30 p.m.	Department of Natural Resources Henry A. Wallace Bldg. Fourth Floor East Conference Room Des Moines, Iowa
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Comments at the hearing may be submitted orally or in writing.

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 459.102 and 459.310.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **567—65.1(455B)** by adopting the following **new** definition in alphabetical order:

“Designated wetland” means land designated as a protected wetland by the United States Department of the Interior or the department of natural resources, including but not limited to a protected wetland as defined in Iowa Code section 456B.1, if the land is owned and managed by the federal government or the department of natural resources. However, a designated wetland does not include land where an agricultural drainage well has been plugged causing a temporary wetland or land within a drainage district or levee district. Designated wetlands in the state are listed in “Designated Wetlands in Iowa,” [month and day to be inserted when amendment is adopted], 2006, which is incorporated by reference; this document is on file at the state law library where it is also available via the Internet at [Internet address to be inserted when amendment is adopted].

ARC 4762B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendments reflect current Board policies that permit persons that wish to voluntarily register campaign committees prior to exceeding the \$750 financial filing threshold to use the shorter “paid for by” attribution statement by filing the appropriate form.

The proposed amendments do not contain a waiver provision as no obligation is being imposed.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Any interested person may make written comments on the proposed amendments on or before January 10, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code sections 68A.201 and 68A.402A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **4.1(1)**, paragraph “a,” by adding **new** subparagraph (4) as follows:

(4) A person that wishes to register a committee for purposes of using the short form “paid for by” attribution statement shall file Form DR-SFA pursuant to rule 351—4.11(68A).

ITEM 2. Rescind rule 351—4.11(68A,68B) and adopt the following **new** rule in lieu thereof:

351—4.11(68A) Voluntary registration.

4.11(1) Persons voluntarily registering a committee. A person that has not exceeded the \$750 financial filing threshold may file Form DR-SFA for purposes of using the short form “paid for by” attribution under Iowa Code section 68A.405 and rule 351—4.38(68A).

4.11(2) \$750 threshold later exceeded. A person filing Form DR-SFA shall not be required to file a statement of organization or be required to file disclosure reports unless the \$750 threshold is later exceeded. A person that later exceeds the \$750 threshold and that fails to timely file a statement of organization or to timely file disclosure reports may be subject to board sanctions.

This rule is intended to implement Iowa Code sections 68A.201 and 68A.402A.

ARC 4768B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

The proposed amendment reflects current Board policy concerning the ability of a person to remedy the failure to include on political materials a full and accurate “paid for by” attribution statement by resending corrected political material to the same portion of the public that received the original political material and by filing a copy of the corrected material with the Board.

The proposed amendment does not contain a waiver provision as no new obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before January 10, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68A.405 as amended by 2005 Iowa Acts, chapter 72, section 16, and Iowa Code section 68B.32A(8) as amended by 2005 Iowa Acts, chapter 76, section 6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 4.41(1) as follows:

4.41(1) Administrative resolution. In an effort to informally resolve apparent violations of the requirement to place a “paid for by” attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original political advertising or political material that did not include the attribution statement to place a correction advertisement in a local newspaper that reaches the same or substantially the same portion of the public that received the original political advertising or political material. The correction advertisement shall not be placed in the classified section. *A person may also resolve a violation of the “paid for by” attribution statement by resending corrected political material to the same portion of the public that received the original political material and by filing a copy of the corrected material with the board.*

ARC 4767B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 6, “Executive Branch Ethics,” Iowa Administrative Code.

The proposed amendment reflects the legislative mandate that directs the Iowa Ethics and Campaign Disclosure Board to adopt a rule establishing a procedure for officials of a regulatory agency to obtain consent when selling goods or services to a person subject to the regulatory authority of the agency.

The proposed amendment contains a waiver provision as applicable.

Any interested person may make written comments on the proposed amendment on or before January 10, 2006. Comments should be directed to Charlie Smithson, Iowa Ethics

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68B.4 as amended by 2005 Iowa Acts, chapter 76, section 3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule 351—6.11(68B) as follows:

351—6.11(68B) Sales by regulatory agency officials or employees. An official or employee of a regulatory agency shall not directly or indirectly sell any goods or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5 2005 Iowa Acts, chapter 76, section 3, and this rule. This prohibition does not apply to sales that are part of the official's or employee's state duties.

6.11(1) Applicability. Pursuant to Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5 2005 Iowa Acts, chapter 76, section 3, the board shall adopt rules specifying the method by which an official or employee of a regulatory agency may obtain consent to sell a good or service to an individual, association, or corporation subject to the regulatory authority of the official's or employee's agency. Each regulatory agency shall adopt rules specifying the method by which officials may obtain such consent. This rule sets out the method of obtaining consent by a regulatory agency official or employee.

6.11(2) Definitions. For purposes of this rule, the following definitions apply:

"Agency" means a regulatory agency.

"Employee" means an employee of an executive branch regulatory agency and does not include an independent contractor or an official.

"Official" means a statewide elected official of a regulatory agency, an executive or administrative head or heads of a regulatory agency, a deputy executive or administrative head or heads of a regulatory agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a regulatory agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

"Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

6.11(3) Request for consent. An official's or employee's request for an agency's consent to the sale of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the official's or employee's agency at least 20 calendar days in advance of the proposed sale of any goods or services.

b. The request shall include all of the following:

(1) The name of the individual, association, or corporation to which the goods or services are to be sold;

(2) The relationship of the individual, association, or corporation to the agency;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the official or employee explaining how the proposed sale of the goods or services will not violate the provisions of Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5 2005 Iowa Acts, chapter 76, section 3, or create a conflict of interest under Iowa Code section 68B.2A.

6.11(4) Agency guidelines. Iowa Code section 68B.4 as amended by 2005 Iowa Acts, chapter 76, section 3, and the guidelines in this subrule shall be the sole legal authorities to be used by an agency in considering the granting of consent. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

a. The official or employee is not the person with the authority to determine whether consent should be granted.

b. The duties and functions performed by the official or employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold.

c. The selling of the goods or services does not affect the official's or employee's duties or functions at the agency.

d. The selling of the goods or services will not cause the official or employee to advocate on behalf of the individual, association, or corporation to the agency.

e. The selling of the goods or services does not cause the official or employee to sell goods or services to the agency on behalf of the individual, association, or corporation.

f. Selling of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

g. The request complies with the procedural requirements of subrule 6.11(3).

These guidelines shall be publicized and made known to employees all personnel throughout the agency.

6.11(5) Agency decision. The official's or employee's agency shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the official or employee and the agency. If the request is denied or granted conditionally, the agency shall state the reasons for the denial or conditional consent.

6.11(6) Appeal of denial. An official or employee who receives a denial or conditional consent may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5 2005 Iowa Acts, chapter 76, section 3, and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.11(7) Copy of consent filed with board. Pursuant to Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5 2005 Iowa Acts, chapter 76, section 3, an agency granting consent shall file a copy of the consent with the board within 20 days of consent being granted. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the official individual who granted the consent.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

6.11(8) Consent not a defense. Consent granted by an agency under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the *official or employee* to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code Supplement section 68B.4 as amended by 2004 Iowa Acts, Senate File 2179, section 5 2005 Iowa Acts, chapter 76, section 3.

ARC 4751B**HUMAN SERVICES
DEPARTMENT[441]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 225C.6, the Department of Human Services proposes to amend Chapter 24, “Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities,” Iowa Administrative Code.

These amendments clarify expectations of provider organizations and update accreditation procedural requirements. Changes include the following:

- Prohibiting staff of an organization from serving as voting members on the organization’s board of directors.
- Refining the definition of an “incident” in relation to medication errors to include only errors that could lead to death, result in physical injury, or require emergency mental health treatment and making minor changes in incident reporting performance indicators to be consistent with incident reporting requirements for the Medicaid home- and community-based mental retardation waiver.
- Rescinding the definition of “psychiatric rehabilitation practitioner” and adopting the definition of “intensive psychiatric rehabilitation practitioner” that eliminates the requirement for a graduate degree, lowers from two years to one year the amount of rehabilitation work experience required with a bachelor’s degree, and includes persons certified as psychiatric rehabilitation practitioners by the United States Psychiatric Rehabilitation Association.
- Expanding the performance indicators for organization activities to include trending and tracking of incident report data and review of the organization’s response to dangerous or threatening situations and to clarify specific applications of the performance indicators on internal review of individual records and identification of areas in need of improvement to organizations providing outpatient psychotherapy and counseling services.
- Requiring that organizations obtain documentation of staff qualifications from the primary sources (colleges, licensing agencies, etc.).
- Adding an environmental performance indicator for cleanliness and safety of toys and material used by children.
- Clarifying the performance indicator for documentation of legal restrictions and changing terminology regarding authorization to release information.

- Adding a performance indicator on the development of individual crisis plans for providers of outpatient psychotherapy and counseling, intensive psychiatric rehabilitation, day treatment, and partial hospitalization services.

- Reducing, clarifying, and reordering the performance indicators for intensive psychiatric rehabilitation.

- Adding and reordering performance indicators for outpatient psychotherapy and counseling services.

- Requiring organizations to notify a representative sample of stakeholders of upcoming surveys in order to allow stakeholders to meet with the accreditation team.

- Requiring organizations to give the Department written notice of changes in ownership, management, service delivery, service philosophy, or transfer of operations.

- Correcting the point totals and indicator values to correspond to the updated performance indicators.

These amendments do not provide for waivers in specified situations. Organizations may request a waiver of these rules under the Department’s general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before January 13, 2006. Comments should be directed to Mary Ellen Imlau, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

Interested persons may also present their views either orally or in writing at the public hearings listed below. Any person who intends to attend a public hearing and requires special accommodations for specific needs such as hearing or mobility impairments should contact the Office of Policy Analysis at (515)281-2440.

Conference Room 104 City View Plaza 1200 University Ave. Des Moines, Iowa	Wednesday, January 11, 2006 8 a.m.
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Second Floor Conference Room Story County Human Services Building 126 S. Kellogg St. Ames, Iowa	Wednesday, January 11, 2006 8:30 a.m.
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Rooms A and B, First Floor Trosper-Hoyt Building 822 Douglas St. Sioux City, Iowa	Wednesday, January 11, 2006 9 a.m.
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Sixth Floor Conference Room Scott County Administrative Center 428 Western Ave. Davenport, Iowa	Wednesday, January 11, 2006 10 a.m.
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Third Floor Conference Room Nesler Centre 799 Main St. Dubuque, Iowa	Thursday, January 12, 2006 9 a.m.
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Room 220 Pinecrest Office Building 1407 Independence Ave. Waterloo, Iowa	Thursday, January 12, 2006 10 a.m.
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ICN Room Pottawattamie County DHS Office 417 E. Kanesville Blvd. Council Bluffs, Iowa	Thursday, January 12, 2006 1 p.m.
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HUMAN SERVICES DEPARTMENT[441](cont'd)

Large Conference Room Thursday, January 12, 2006
 Wapello County Department of Human Services 1 p.m.
 120 E. Main St.
 Ottumwa, Iowa

Fifth Floor Conference Room Friday, January 13, 2006
 Iowa Building 1 p.m.
 411 Third St. SE
 Cedar Rapids, Iowa

These amendments are intended to implement Iowa Code section 225C.6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **441—24.1(225C)** as follows:

Amend the definitions of "advisory board," "board of directors," and "incident" as follows:

"Advisory board" means the board that reviews and makes recommendations to the organization's board of directors on the program being accredited. The advisory board shall meet at least three times a year and shall have at least three members, at least 51 percent of whom are not providers. The advisory board shall include representatives who have disabilities or family members of persons with disabilities. The advisory board's duties include review and recommendation of policies, development and review of the organizational plan for the program being accredited, review and recommendation of the budget for the program being accredited, and review and recommendation of the total quality performance improvement program of the program being accredited.

"Board of directors" means the board that provides oversight, guidance, and policy direction for the operation of the program being accredited. The board shall have at least three members. *Voting members of the board shall not be staff of the organization; this provision shall not apply to a county board of supervisors acting in its official capacity.*

"Incident," for the purposes of this chapter, means an occurrence involving the individual using the service that:

1. Results in a physical injury to or by the individual that requires a physician's treatment or admission to a hospital, or
2. Results in someone's death, or
3. Requires emergency mental health treatment for the individual, or
4. Requires the intervention of law enforcement, or
5. Results from ~~any~~ a prescription medication error *or pattern of errors that could lead to an outcome cited in numbered paragraph "1," "2," or "3," or*
6. Is reportable to protective services.

Rescind the definition of "psychiatric rehabilitation practitioner."

Adopt the following **new** definition in alphabetical order:

"Intensive psychiatric rehabilitation practitioner" means a person who has at least 60 contact hours of training in intensive psychiatric rehabilitation and either:

1. Is certified as a psychiatric rehabilitation practitioner by the United States Psychiatric Rehabilitation Association; or
2. Holds a bachelor's degree with 30 semester hours or equivalent quarter hours in a human services field (including, but not limited to, psychology, social work, mental health counseling, marriage and family therapy, nursing, education, occupational therapy, and recreational therapy) and has at

least one year of experience in the delivery of services to the population groups that the person is hired to serve.

ITEM 2. Amend rule 441—24.3(225C) as follows:

Amend subrule **24.3(1)**, paragraph "**b**," as follows:

b. Performance indicators. The organization:

(1) ~~Measures~~ *Annually measures* and assesses organizational activities and services accredited in this chapter ~~annually~~.

(2) Gathers information from individuals using the services, ~~from~~ staff, and ~~from~~ family members.

(3) Implements an internal review of individual records for those services accredited under this chapter. *For outpatient psychotherapy and counseling services, the organization:*

1. *Reviews the individual's involvement in and with treatment.*

2. *Ensures that treatment activities are documented and are relevant to the diagnosis or presenting problem.*

(4) Reviews the organization's response to incidents reported under subrule 24.4(5) ~~and any other situation that may pose a danger or threat to staff or individuals using the services for necessity, appropriateness, effectiveness and prevention. This review includes tracking and trending of incident data annually to assess the health and safety of consumers.~~

(5) *Reviews the organization's response to any situation that poses a danger or threat to staff or to individuals using the services for necessity, appropriateness, effectiveness, and prevention.*

(5) (6) Identifies areas in need of improvement.

(6) (7) Has a plan to address the areas in need of improvement. *For outpatient service, the organization establishes a plan to resolve the problem of patients' missing appointments.*

(7) (8) Implements the plan and documents the results.

Amend the performance indicators for human resources in subrule **24.3(4)**, paragraph "**b**," subparagraph (2), as follows:

(2) Has a process to verify qualifications of staff, including degrees, licenses, medication management training, and certification as required by the position, *through documentation obtained from the primary source within 90 days of the staff person's employment.*

Amend the performance indicators for organizational environment in subrule **24.3(5)**, paragraph "**b**," by adopting the following **new** subparagraph (6):

(6) All toys and other materials used by children are clean and safe.

ITEM 3. Amend rule 441—24.4(225C) as follows:

Amend subrule **24.4(5)** as follows:

Amend paragraph "**a**" as follows:

a. Performance benchmark. The organization completes an incident report ~~for incidents that occur or are identified during times of direct contact by~~ *when organization staff first become aware that an incident has occurred.*

Amend paragraph "**b**," subparagraph (1), introductory paragraph, and subparagraph (2), as follows:

(1) ~~The organization has printed incident forms available that include documents the following information:~~

(2) ~~The staff who were~~ *directly involved at the time of the incident or who first became aware of the incident* prepare and sign the incident report before forwarding it to the supervisor.

Amend the performance indicators for confidentiality and legal status in subrule **24.4(6)**, paragraph "**b**," as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Performance indicators.

(1) The organization obtains *voluntary* written ~~consent~~ *authorization* from the individual using the service, the individual's legal guardian, or other people authorized by law before releasing personal identifying information, medical records, mental health records, or any other confidential information.

(2) Staff complete ~~releases~~ *voluntary written authorization forms* in accordance with existing federal and state laws, rules, and regulations and maintain them in each individual file.

(3) ~~Guardianship papers and probation, commitment~~ *Documentation regarding restrictions on the individual, such as guardianship, power of attorney, conservatorship, mental health commitments, or other court orders, are* is placed in the individual's record, if applicable.

Amend the performance indicators for day treatment services in subrule **24.4(10)**, paragraph "b," by adopting the following *new* subparagraph (9):

(9) Individuals using the service participate in developing a detailed individualized crisis intervention plan that includes natural supports and self-help methods.

Amend the performance indicators for intensive psychiatric rehabilitation services in subrule **24.4(11)**, paragraph "b," by rescinding subparagraphs (1) through (17) and adopting the following *new* subparagraphs (1) through (12) in lieu thereof:

(1) Individuals using the service receive services from staff who meet the definition of intensive psychiatric rehabilitation practitioner. The intensive psychiatric rehabilitation supervisor has at least a bachelor's degree in a human service field and 60 hours of training in intensive psychiatric rehabilitation.

(2) Individuals using the service receive 4 to 10 hours per week of recognized psychiatric rehabilitation services. All services are provided for an identified period.

(3) Whenever possible, intensive psychiatric rehabilitative services are provided in natural settings where individuals using the service live, learn, work, and socialize.

(4) Significantly involved others participate in the planning and provision of services as appropriate and as desired by the individual using the service.

(5) Individuals using the service participate in developing a detailed individualized crisis intervention plan that includes natural supports and self-help methods.

(6) A readiness assessment is initially completed with staff to assist the individual in choosing a valued role and environment. The readiness assessment culminates in a score that documents the individual's motivational readiness.

(7) During the readiness development phase, staff document monthly in the individual's file the changes in the individual's motivational readiness to choose valued roles and environments.

(8) During the goal-choosing phase, staff and the individual identify personal criteria, describe alternative environments, and choose the goal. These activities are documented in the individual's file.

(9) During the goal-achieving phase, the functional assessment and resource assessment are completed. Skill teaching takes place. These activities are documented in the individual's file.

(10) During goal keeping, individuals using the service participate in discharge planning that focuses on coordinating and integrating individual, family, community, and organization resources for successful community tenure and the

anticipated end of psychiatric rehabilitation services. Staff document increases in skill acquisition and skill competency.

(11) Staff document any positive changes in environmental status, such as moving to a more independent living arrangement, enrolling in an education program, getting a job, or joining a community group.

(12) On an ongoing basis and at discharge, staff or the individual using the service documents the level of individual satisfaction with intensive psychiatric rehabilitation services in each individual's file.

Amend the performance indicators for partial hospitalization services in subrule **24.4(13)**, paragraph "b," by adopting the following *new* subparagraph (9):

(9) Individuals using the service participate in developing a detailed individualized crisis intervention plan that includes natural supports and self-help methods.

Amend the performance indicators for outpatient psychotherapy and counseling services in subrule **24.4(14)**, paragraph "b," by rescinding subparagraphs (1) through (5) and adopting the following *new* subparagraphs (1) through (10) in lieu thereof:

(1) Individuals using the service are prepared for their role as partners in the therapeutic process at intake where they define their situation and evaluate those factors that affect their situations.

(2) Individuals using the service establish desired problem resolution at intake during the initial assessment.

(3) Psychiatric services other than psychopharmacological services are available from the organization as needed by the individual using the service.

(4) Psychopharmacological services are available from the organization as needed.

(5) Staff document mutually agreed-upon treatment goals after each session. A distinct service plan document is not required.

(6) Staff document mutually agreed-upon supports and interventions after each session. A distinct service plan document is not required.

(7) Staff document in the progress notes the individual's status at each visit and the reasons for continuing or discontinuing services. A distinct discharge summary document is not required.

(8) Any assignment of activities to occur between sessions is documented in the following session's narratives.

(9) Individuals using the service who have a chronic mental illness participate in developing a detailed individualized crisis intervention plan that includes natural supports and self-help methods.

(10) The record documents that the organization follows up on individuals who miss appointments.

ITEM 4. Amend rule 441—24.5(225C) as follows:

Amend subrule 24.5(3), introductory paragraph, as follows:

24.5(3) Application review. Upon receipt of an application, Form 470-3005, the division shall review the materials submitted to determine whether the application is complete and request any additional material as needed. Survey reviews shall commence only after the organization has submitted all application material. *When an organization is scheduled for a survey, the organization shall notify a representative sample of stakeholders of the upcoming survey so that stakeholders and other community members have an opportunity to meet with the accreditation team.*

Amend subrule **24.5(4)**, paragraph "b," subparagraphs (2) and (3), as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) Each of the ~~32~~ *34* indicators for organizational activities has a value of ~~.47~~ *.44* out of a possible score of 15.

(3) Each service has a separate weighting according to the total number of indicators applicable for that service, with a possible score of 70, as follows:

Service	Number of indicators	Value of each indicator
Case management	52 <i>51</i>	1.35 <i>1.37</i>
Day treatment	47 <i>48</i>	1.49 <i>1.46</i>
Intensive psychiatric rehabilitation	56 <i>51</i>	1.25 <i>1.37</i>
Supported community living	45	1.55
Partial hospitalization	47 <i>48</i>	1.49 <i>1.46</i>
Outpatient psychotherapy and counseling	24 <i>35</i>	2.92 <i>2.00</i>
Emergency	8	8.75
Evaluation	4	17.50

Amend subrule **24.5(5)**, paragraph “f,” by adopting the following **new** subparagraph (4):

(4) An organization must notify the division when there are changes in its ownership, structure, management, or service delivery.

Amend subrule 24.5(6) as follows:

24.5(6) Nonassignability. Accreditation shall not be assignable to any other organization or provider. Any person or other legal entity acquiring an accredited facility for the purpose of operating a service shall make an application as provided in subrule 24.5(2) for a new certificate of accreditation. Similarly, any organization having acquired accreditation and desiring to alter the service philosophy or transfer operations to different premises must notify the division *in writing* 30 calendar days before taking action in order for the division to review the change.

Rescind subrule 24.5(7) and adopt the following **new** subrule in lieu thereof:

24.5(7) Discontinuation.

a. Discontinued organization. A discontinued organization is one that has terminated all of the services for which it has been accredited. Accreditation is not transferable between organizations.

(1) An organization shall notify the division in writing of any sale, change in business status, closure, or transfer of ownership of the business at least 30 calendar days before the action.

(2) The organization shall be responsible for the referral and placement of individuals using the services, as appropriate, and for the preservation of all records.

b. Discontinued service. An organization shall notify the division in writing of the discontinuation of an accredited or certified service at least 30 calendar days before the service is discontinued.

(1) Notice of discontinuation of a service shall not be initiated during the 30 days before the start of a survey. Once a survey has begun, all services shall be considered in determining the organization's accreditation score.

(2) The organization shall be responsible for the referral and placement of individuals using the services, as appropriate, and for the preservation of all records.

ITEM 5. Amend rule 441—24.6(225C), introductory paragraph and subrule 24.6(1), as follows:

441—24.6(225C) Deemed status. The commission ~~may~~ *shall* grant deemed status to organizations accredited by a recognized national, not-for-profit, accrediting body when the

commission determines the accreditation is for similar services. The commission ~~shall~~ *may* also grant deemed status for supported community living services to organizations that are certified under the Medicaid home- and community-based services (HCBS) mental retardation waiver.

24.6(1) National accrediting bodies.

a. The national accrediting bodies currently recognized as meeting division criteria for possible deeming are:

1. Joint Commission on Accreditation of Healthcare Organizations (JCAHO).

2. The Commission on Accreditation of Rehabilitation Facilities (CARF).

3. The Council on Quality and Leadership in Supports for People with Disabilities (The Council).

4. Council on Accreditation of Services for Families and Children (COA).

b. The accreditation credentials of these national bodies must specify the type of organization, programs, and services that ~~they~~ *these bodies* accredit and include targeted population groups, if appropriate.

c. Deemed status means that the division is accepting an outside body's review, assessment, and accreditation of an organization's functioning and services. Therefore, the accrediting body doing the review must be assessing categories of organizations and types of programs and services corresponding to those described under this chapter. *An organization that has deemed status must adhere to and be accountable for the rules in this chapter.*

d. When an organization that is nationally accredited requests deemed status for services not covered by the national body's standards but covered under this chapter, the division shall accredit those services. Division staff shall provide technical assistance to organizations with deemed status as time permits.

ITEM 6. Amend subrule 24.7(3), introductory paragraph, as follows:

24.7(3) Investigation of complaint. If the division concludes that the complaint is reasonable, has merit, and is based on a violation of rules in this chapter, it may make an investigation of the organization. The division may investigate complaints by an office audit or by an on-site ~~visit~~ *investigation*. The division shall give priority for on-site ~~visits~~ *investigations* to instances when individuals using the service are in immediate jeopardy.

ARC 4774B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” Iowa Administrative Code.

This proposed amendment adopts by reference changes to federal occupational safety and health regulations. The changes delete language referring to various national consen-

LABOR SERVICES DIVISION[875](cont'd)

sus standards and industry standards that are outdated, and adopt an alternative fit-testing protocol for employers with respiratory protection programs.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 88, to protect the safety and health of Iowa's workers, and make Iowa's occupational safety and health regulations more current and consistent with federal regulations.

Pursuant to Iowa Code subsection 88.5(1)(a), Iowa must adopt the federal standards.

This amendment will not necessitate combined expenditures exceeding \$100,000 by all political subdivisions or agencies and entities that contract with political subdivisions to provide services.

Written data, views, or arguments to be considered in adoption shall be submitted no later than January 13, 2006, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.state.ia.us.

A public hearing will be held on January 13, 2006, at 9 a.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

This amendment is intended to implement Iowa Code section 88.5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend rule **875—10.20(88)** by inserting the following at the end thereof:

69 Fed. Reg. 46993 (August 4, 2004)

70 Fed. Reg. 53929 (September 13, 2005)

ARC 4732B**LOTTERY AUTHORITY, IOWA[531]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 99G.9(3), the Iowa Lottery Authority hereby proposes to amend Chapter 1, “General Operation of the Lottery,” Chapter 12, “Licensing,” and Chapter 14, “Monitor Vending Machines,” Iowa Administrative Code.

Chapter 1 is being amended to reflect the current address of Lottery headquarters. Chapter 12 is being amended to clarify who is eligible to apply for a Lottery retailer license. Chapter 14 is being amended to establish time limits for redeeming winning tickets sold through Monitor Vending Machines (MVMs) and to set the number of MVMs that can be placed in a single retail outlet.

Any interested party may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request must include all of the following: the name, address, and telephone number of the party making the comments or request; a reference to the specific proposed amendments that are the subjects of the comments or request; and the general content of a requested oral presentation.

All comments or requests should be addressed to the Iowa Lottery Rules Administrator and should either be mailed to 2323 Grand Avenue, Des Moines, Iowa 50312; faxed to (515)725-7882; or E-mailed to mtooman@ialottery.com. All comments or requests for oral presentations must be received by the Lottery Rules Administrator no later than January 10, 2006.

A meeting to hear requested oral presentations is scheduled for January 10, 2006, at 10 a.m. at the Iowa Lottery headquarters. The meeting will be canceled without further notice if no oral presentations are requested.

These amendments are intended to implement Iowa Code section 17A.3(1)“a” and chapter 99G.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 531—1.3(17A) as follows:

531—1.3(17A) Location. Lottery headquarters is located at 2045 2323 Grand Avenue, Des Moines, Iowa 50312-4999 5307. The lottery has regional offices located throughout the state offering some of the services available at the headquarters office. Information regarding lottery headquarters and regional offices can be obtained on the lottery Web site, www.ialottery.com, on point-of-sale game-play publications, and by contacting the lottery headquarters. The lottery board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. to 4:30 p.m., Monday through Friday. Prize redemption operations close at 4 p.m.

ITEM 2. Amend subrule **12.1(1)**, paragraph “f,” as follows:

f. If ~~an individual~~ *a natural person*, is less than 18 years of age.

ITEM 3. Amend rule **531—14.9(99G)** by adding **new** numbered paragraph “7” as follows:

7. The maximum number of MVMs that may be placed in any MVM premises is two, with the exception of fraternal or charitable social clubs, which may place up to four MVMs, and MVM premises in which MVMs are placed in a monitored, age-restricted area, which also may place up to four MVMs. An age-restricted area is an MVM premises in which persons younger than 21 years of age are not allowed; or, in a premises that allows admittance to persons younger than 21 years of age, an area that is partitioned or cordoned off in such a manner so as to restrict access to the MVMs. No location may have more than four MVMs, and all MVMs shall be located in the same age-restricted area within the MVM premises.

ITEM 4. Amend subrule 14.21(4) as follows:

14.21(4) MVM retailers shall arrange for the MVM premises operator or agent(s) or employee(s) of the MVM premises operator to pay all prizes *of less than \$600 or less* during normal business hours at the MVM premises where the prize-winning ticket was vended. Prizes ~~of in excess of \$600 or~~

LOTTERY AUTHORITY, IOWA[531](cont'd)

more shall be paid at a lottery regional office or at lottery headquarters in Des Moines. Prizes to be claimed from an MVM premises operator must be claimed prior to the MVM premises' first close of business following the vending of the winning ticket. *Prizes to be claimed from a lottery regional office or at lottery headquarters must be claimed within 90 days of the date of sale of the ticket.*

ARC 4759B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendment was approved at the September 13, 2005, regular meeting of the Board of Pharmacy Examiners.

The proposed amendment clarifies the provisions regarding patient counseling for new prescriptions, specifically stating that an offer to counsel does not fulfill the counseling requirements imposed by the rule.

Requests for waiver or variance of the discretionary provisions of this rule will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendment not later than 4:30 p.m. on January 10, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

This amendment is intended to implement Iowa Code section 155A.13.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 6.14(1), introductory paragraph, as follows:

6.14(1) Counseling required. Upon receipt of a new prescription drug order and following a prospective drug use review pursuant to 657—8.21(155A), a pharmacist shall counsel each patient or patient's caregiver. *An offer to counsel shall not fulfill the requirements of this rule.* The counseling *Patient counseling* shall be on matters which, in the pharmacist's professional judgment, will enhance or optimize drug therapy. Appropriate elements of patient counseling may include:

ARC 4758B

PHARMACY EXAMINERS BOARD[657]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practices," and Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

The amendments were approved at the September 13, 2005, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments require that a pharmacy utilizing a computerized prescription record system or a record retention system that does not maintain hard-copy records shall be capable of producing, on site, a hard copy of the record or a printout of prescription fill data upon the request of the board, its representative, or other authorized individual or agency.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 10, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.306, 155A.13, and 155A.35.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 6.16(4) as follows:

6.16(4) Alternative data retention system. Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

- a. The records maintained in the alternative system contain all of the information required on the manual record; and
- b. The data processing system is capable of producing a hard copy of the record, ~~within two business days,~~ upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies.

ITEM 2. Amend subrule 21.4(2), introductory paragraph, as follows:

21.4(2) Printout of prescription fill data. Any computerized system shall have the capability of producing a printout of any prescription fill data the user pharmacy is responsible for maintaining or producing under state and federal rules and regulations. This would include a refill-by-refill audit

PHARMACY EXAMINERS BOARD[657](cont'd)

trail for any specified strength and dosage form of any prescription drug by brand or generic name or both. In any computerized system employed by a user pharmacy, ~~the central record-keeping location must be capable of providing the printout to the pharmacy within 48 hours the pharmacy shall be able to produce on site a printout of prescription fill data upon the request of the board or its representative.~~ The printout shall include the following:

ARC 4760B**PHARMACY EXAMINERS
BOARD[657]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy Examiners hereby gives Notice of Intended Action to amend Chapter 10, “Controlled Substances,” and Chapter 23, “Long-Term Care Pharmacy Practice,” Iowa Administrative Code.

The amendments were approved at the September 13, 2005, regular meeting of the Board of Pharmacy Examiners.

The proposed amendments establish a procedure for documentation of controlled substances wasted as a result of drug compounding operations or administration to a patient from a registrant’s stock or emergency controlled substance supply. The amendment to subrule 23.21(2) changes an invalid reference to identify renumbered subrule 10.18(3).

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 10, 2006. Such written materials should be sent to Terry Witkowski, Executive Officer, Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code section 124.306.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 657—10.18(124) by renumbering current subrule **10.18(2)** as **10.18(3)** and adopting the following **new** subrule 10.18(2):

10.18(2) Waste. Except as otherwise specifically provided by federal or state law or rules of the board, the unused portion of a controlled substance resulting from administration to a patient from a registrant’s stock or emergency supply or resulting from drug compounding operations may be destroyed or otherwise disposed of by the registrant or a pharmacist in witness of one other licensed health care provider pursuant to this subrule. A written record of the waste shall be made and maintained by the registrant for a minimum

of two years following the destruction or other disposal. The record shall include the signatures of the individual destroying or otherwise disposing of the waste controlled substance and of the witnessing licensed health care provider and shall identify the following:

- a. The controlled substance wasted;
- b. The date of destruction or other disposition;
- c. The quantity or estimated quantity of the wasted controlled substance;
- d. The source of the controlled substance, including identification of the patient to whom the substance was administered or the drug compounding process utilizing the controlled substance; and
- e. The reason for the waste.

ITEM 2. Amend subrule 23.21(2) as follows:

23.21(2) Destruction or other disposition in the long-term care pharmacy. Controlled substances returned to the pharmacy for destruction or other disposition may be destroyed or otherwise disposed of pursuant to the requirements of 657—subrule ~~10.8(2)~~ **10.18(3)**.

ARC 4757B**PHARMACY EXAMINERS
BOARD[657]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 6, 2005, as **ARC 4307B**, proposing to adopt new Chapter 13, “Electronic Drug Database Program,” and proposing to amend Chapter 36, “Discipline,” Iowa Administrative Code.

The Notice proposed to adopt a new chapter providing for the establishment of a centralized electronic database containing records of controlled substances prescriptions dispensed by pharmacies to patients in Iowa. The proposed rules defined terms used in the chapter, identified data elements to be reported, and established reporting requirements. Provisions regarding the confidentiality and limited release of records, including requirements for release of database information and records, were established. The rules provided for periodic review by the Board of database records and referral of database information upon a determination of probable cause to believe that a violation of law may have occurred. Procedures for correction of erroneous database records and periodic destruction of database records were established. The proposed amendments to Chapter 36 would have established grounds for disciplinary action in the case of a licensee’s or registrant’s failure to comply with provisions of the new chapter.

The Board is terminating the rule making commenced in **ARC 4307B** based on comments and objections received from members of the public, health care professional organizations, and the Administrative Rules Review Committee.

ARC 4734B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 202, “Discipline for Physical Therapists and Physical Therapist Assistants,” Iowa Administrative Code.

The proposed amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Any interested person may make written comments on the proposed amendment no later than January 10, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 10, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Adopt **new** rule 645—202.5(148A) as follows:

645—202.5(148A) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee’s expense.

202.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

202.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

202.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee’s confidentiality.

202.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

202.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

202.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians’ or health care providers’ testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

202.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4733B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

209, "Discipline for Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

The proposed amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Any interested person may make written comments on the proposed amendment no later than January 10, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 10, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 645—209.5(148B) as follows:

645—209.5(148B) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

209.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

209.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

209.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed with-

in 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

209.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

209.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

209.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

209.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4739B

PROFESSIONAL LICENSURE
DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 263, "Discipline for Respiratory Care Practitioners," Iowa Administrative Code.

The proposed amendment provides the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening.

Any interested person may make written comments on the proposed amendments no later than January 10, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 10, 2006, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

This amendment is intended to implement Iowa Code chapters 21, 147, 152B and 272C.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 645—263.5(152B) as follows:

645—263.5(152B) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

263.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- A description of the type of examination to which the licensee must submit.
- The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- The time period in which the licensee must schedule the required examination.
- The amount of time which the licensee has to complete the examination.
- A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- A requirement that the licensee communicate with the board regarding the status of the examination.
- A concise statement of the facts relied on by the board to order the evaluation.

263.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

263.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

263.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

263.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

263.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony

or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

263.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4744B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners hereby gives Notice of Intended Action to adopt Chapter 362, “Continuing Education for Interpreter for the Hearing Impaired Practitioners,” Iowa Administrative Code.

The proposed amendment adopts a new continuing education chapter.

Any interested person may make written comments on the proposed amendment no later than January 10, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 10, 2006, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** chapter:

CHAPTER 362

CONTINUING EDUCATION FOR INTERPRETER FOR THE HEARING IMPAIRED PRACTITIONERS

645—362.1(272C,80GA,ch1175) Definitions. For the purpose of these rules, the following definitions shall apply:

“Active license” means a license that is current and has not expired.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Approved program/activity” means a continuing education program/activity meeting the standards set forth in these rules.

“Audit” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“Board” means the board of interpreter for the hearing impaired examiners.

“Continuing education” means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“Hour of continuing education” means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“Inactive license” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“Independent study” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“License” means license to practice.

“Licensee” means any person licensed to practice as an interpreter for the hearing impaired in the state of Iowa.

645—362.2(272C,80GA,ch1175) Continuing education requirements.

362.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each odd-numbered year and ending on June 30 of the next odd-numbered year. Each biennium, each person who is licensed to practice as an interpreter for the hearing impaired in this state shall be required to complete a minimum of 40 hours of continuing education. A licensee who provides proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification meets continuing education requirements for that biennium renewal cycle.

362.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 40 hours of continuing education per biennium. A licensee who provides proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification meets continuing education requirements for that biennium renewal cycle.

362.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

362.2(4) No hours of continuing education shall be carried over into the next biennium.

362.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—362.3(272C,80GA,ch1175) Standards.

362.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

362.3(2) Specific criteria.

a. Continuing education shall be obtained by attending programs relating to the practice of interpreting or transliterating for the deaf or hard of hearing which meet the criteria in subrule 362.3(1) and are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences;

(2) Obtained in content areas that conform to the content areas specified in the Registry of Interpreters for the Deaf (RID) Certification Maintenance Program Standards and Criteria for Approved Sponsors, revised edition, June 2004, with the exception of the number of CEUs required which is defined in 362.3(2)“b.”

b. Each biennium, licensees shall obtain 30 hours (3 CEUs) in professional studies and 10 hours (1 CEU) in general studies. The board shall accept proof of a current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification in lieu of proof of the 40 hours of continuing education.

c. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

1 CEU = 10 continuing education hours

d. Credit is given only for actual hours attended.

645—362.4(272C,80GA,ch1175) Audit of continuing education report. After each educational biennium, the board may audit licensees to review compliance with continuing education requirements.

362.4(1) The board may audit a percentage of its licensees and may, at its discretion, determine to audit a licensee. A licensee whose license renewal application is submitted during the grace period may be subject to a continuing education audit.

362.4(2) The licensee shall provide to the board for auditing purposes proof of current National Interpreter Certification or current Registry of Interpreters for the Deaf Certification or the following information:

a. Date and location of course, course title, course description, course outline, course schedule, names and qualifications of instructors/speakers and method of presentation, or a program brochure which includes all the information required in this paragraph;

b. Number of contact hours for program attended; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor.

362.4(3) For auditing purposes, all licensees must retain the information identified in subrule 362.4(2) for two years after the biennium has ended.

362.4(4) Information identified in subrule 362.4(2) must be submitted within one month after the date of notification of the audit. Extension of time may be granted on an individual basis.

362.4(5) If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit if the board determines that the deficiency was the result of good-faith conduct on the part of the licensee. The deadline for receipt of the documentation for this make-up credit is 120 days from the date of mailing to the address of record at the board office.

362.4(6) Failure to notify the board of a current mailing address will not absolve the licensee from the audit requirement, and an audit must be completed before license renewal.

645—362.5(272C,80GA,ch1175) Automatic exemption. A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or
3. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
4. Was absent from the state but engaged in active practice under circumstances which were approved by the board.

645—362.6(272C) Continuing education exemption for disability or illness. A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

362.6(1) The board may grant an extension of time to fulfill the continuing education requirement.

362.6(2) The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

362.6(3) The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

645—362.7(272C,80GA,ch1175) Grounds for disciplinary action. The board may take formal disciplinary action on the following grounds:

362.7(1) Failure to cooperate with a board audit.

362.7(2) Failure to meet the continuing education requirement for licensure.

362.7(3) Falsification of information on the license renewal form.

362.7(4) Falsification of continuing education information.

These rules are intended to implement Iowa Code section 272C.2 and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

ARC 4745B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners hereby gives Notice of Intended Action to adopt new Chapter 363, "Discipline for Interpreter for the Hearing Impaired Practitioners," Iowa Administrative Code.

The proposed amendment adopts a new discipline chapter.

Any interested person may make written comments on the proposed amendment no later than January 10, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 10, 2006, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement 2004 Iowa Acts, chapter 1175, and Iowa Code chapters 21, 147 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** chapter:

CHAPTER 363
DISCIPLINE FOR INTERPRETER FOR THE
HEARING IMPAIRED PRACTITIONERS

645—363.1(80GA,ch1175) Definitions.

"Board" means the board of interpreter for the hearing impaired examiners.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Consumer” means an individual utilizing interpreting services who uses spoken English, American sign language, or a manual form of English, and in an interpreting situation or setting, the term “consumer” includes both the deaf or hard-of-hearing individual or individuals and the hearing individual or individuals present in such situation or setting.

“Discipline” means any sanction the board may impose upon licensees.

“Licensee” means any person licensed to practice as an interpreter for the hearing impaired in the state of Iowa.

645—363.2(80GA, ch1175, 272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—363.3(147, 272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

363.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state which includes the following:

a. False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state; or

b. Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

363.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

a. A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

b. A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other interpreters in the state of Iowa acting in the same or similar circumstances.

c. A failure to exercise the degree of care which is ordinarily exercised by the average interpreter acting in the same or similar circumstances.

d. Failure to conform to the minimal standard of acceptable and prevailing practice of an interpreter in this state.

e. Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

363.2(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

363.2(4) Practice outside the scope of the profession.

363.2(5) Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

363.2(6) Habitual intoxication or addiction to the use of drugs.

363.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

363.2(8) Falsification of consumer records.

363.2(9) Acceptance of any fee by fraud or misrepresentation.

363.2(10) Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

363.2(11) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

363.2(12) Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

363.2(13) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

363.2(14) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

363.2(15) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

363.2(16) Failure to notify the board within 30 days after occurrence of any judgment or settlement of malpractice claim or action.

363.2(17) Engaging in any conduct that subverts or attempts to subvert a board investigation.

363.2(18) Failure to comply with a subpoena issued by the board, or to otherwise fail to cooperate with an investigation of the board.

363.2(19) Failure to comply with the terms of a board order issued pursuant to rule 645—363.5(80GA, ch1175), or failure to comply with the terms of a board order or the terms of a settlement agreement or consent order issued or executed as resolution of a contested case proceeding.

363.2(20) Failure to pay costs assessed in any disciplinary action.

363.2(21) Submission of a false report of continuing education.

363.2(22) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

363.2(23) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as an interpreter.

363.2(24) Failure to report a change of name or address within 30 days after it occurs.

363.2(25) Representing oneself as an interpreter when one’s license has been suspended or revoked, or when one’s license is on inactive status.

363.2(26) Permitting another person to use the licensee’s license for any purpose.

363.2(27) Permitting an unlicensed employee or person under the licensee’s control to perform activities requiring a license.

363.2(28) Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

practices) which constitutes unethical conduct includes, but is not limited to, the following:

- a. Verbally or physically abusing a consumer or coworker.
- b. Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a consumer or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in sexual activities or sexual contact with a consumer when there is a risk of exploitation or potential harm to the consumer or when the relationship could reasonably be expected to interfere with the interpreter's objectivity, competence, or effectiveness.
- e. Failure to decline or to withdraw from an interpreting assignment when the interpreter does not possess the professional skills and knowledge required for the specific interpreting situation or setting.
- f. Failure to refrain from providing advice or personal opinions or aligning with one person over another in the course of one's professional duties.
- g. Discriminating against a consumer on the basis of age, sex, race, creed, illness, marital status, political belief, religion, mental or physical disability or diagnosis, sexual orientation, or economic or social status.
- h. Failure to inform a consumer when federal or state laws require disclosure of confidential information.
- i. Failure to avoid a conflict of interest when there is a risk of exploitation or potential harm to the consumer or when the relationship could reasonably be expected to interfere with the interpreter's objectivity, competence, or effectiveness; or failure to disclose to a consumer an actual or perceived conflict of interest.
- j. Failure to present a professional appearance that is not visually distracting and is appropriate to the setting.
- k. Practicing a professional discipline without an appropriate license or after expiration of the required license.

363.2(29) Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control of the United States Department of Health and Human Services.

363.2(30) Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

645—363.3(147,272C) Method of discipline. The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical, mental, or clinical competency evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

645—363.4(272C) Discretion of board. The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

645—363.5(80GA,ch1175) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

363.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time which the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.
- h. A concise statement of the facts relied on by the board to order the evaluation.

363.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

363.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

363.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

363.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

363.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

363.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

These rules are intended to implement 2004 Iowa Acts, chapter 1175, and Iowa Code chapters 147 and 272C.

ARC 4753B**PUBLIC SAFETY
DEPARTMENT[661]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 100C.7, the Department of Public Safety hereby gives Notice of Intended Action to adopt new Chapter 275, “Certification of Automatic Fire Extinguishing System Contractors,” Iowa Administrative Code.

Iowa Code chapter 100C was enacted during the 2004 session of the Iowa General Assembly and became effective July 1, 2005. It provides for the certification of automatic fire extinguishing system contractors, based on administrative rules adopted by the State Fire Marshal pursuant to Iowa Code chapter 17A. The statute provides for the establishment of a Fire Extinguishing System Contractors Advisory Board, appointed by the Commissioner of Public Safety, and provides that the State Fire Marshal shall consult with the Board prior to the adoption of the administrative rules for the certification program.

These proposed rules are based upon recommendations developed by the Fire Extinguishing System Contractors Advisory Board. The Board reviewed rules and statutes from other states, material from industry groups, and information from organizations which develop industry standards and codes, such as the National Fire Protection Association (NFPA), and testing organizations, such as the National Institute for Certification in Engineering Technologies (NICET).

The State Fire Marshal and the Fire Extinguishing Contractors Advisory Board welcome comments on any part of these proposed rules. Comment is especially invited on one area which is not addressed in the proposed rules, but which the State Fire Marshal and the Board intend to consider for inclusion in the adopted rules: Should there be separate, less stringent criteria for qualifying as a responsible managing

employee for a contractor whose work includes only fire extinguishing systems of limited application, such as sprinkler systems for one- or two-family residences or special hazard systems designed for use in smaller hood and duct systems? These systems may be listed for use in limited applications by nationally recognized testing laboratories. The Fire Marshal and the Board would be interested in hearing comments about whether separate criteria should be established for contractors whose work is limited to these systems and about what these separate criteria should be.

A public hearing on these proposed rules will be held on January 18, 2006, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, Wallace State Office Building, Des Moines, Iowa 50319, by mail, by telephone at (515)281-5524, or by electronic mail to admrule@dps.state.ia.us, at least one day prior to the public hearing.

Any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on January 23, 2006, or submitted at the public hearing. Persons who wish to convey their views orally other than at the public hearing may contact the Agency Rules Administrator by telephone or in person at the Department office by 4:30 p.m. on January 23, 2006.

These rules are intended to implement Iowa Code chapter 100C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following new chapter is proposed.

CHAPTER 275**CERTIFICATION OF AUTOMATIC FIRE
EXTINGUISHING SYSTEM CONTRACTORS**

661—275.1(100C) Establishment of program. There is established within the fire marshal division a fire extinguishing system contractors certification program. The program is established pursuant to Iowa Code chapter 100C.

275.1(1) Certification required. No person shall act as a fire extinguishing system contractor without being currently certified as a fire extinguishing system contractor by the fire marshal.

275.1(2) Endorsement. The certification of each contractor shall carry an endorsement for:

- a. Automatic sprinkler system layout,
- b. Special hazards suppression systems, or
- c. Both.

Any person acting as a fire extinguishing system contractor shall do so only in relation to systems covered by the endorsement on the contractor's certification.

275.1(3) Length of certification. Certification shall normally be for one year and shall expire on March 31 each year. A certification which is effective on a date other than April 1 shall be effective on the date on which the certification is issued and shall expire on the following March 31.

275.1(4) Inquiries. Inquires regarding the fire extinguishing system contractors certification program may be addressed to:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Fire Extinguishing System Contractors Certification Program

Fire Marshal Division
Iowa Department of Public Safety
401 S.W. 7th Street, Suite N
Des Moines, Iowa 50309

Inquiries may be addressed by electronic mail to fescsp@dps.state.ia.us, by telephone to (515)281-5821, or by facsimile to (515)242-6299.

661—275.2(100C) Definitions. The following definitions apply to rules 661—275.1(100C) through 661—275.7(100C):

“Automatic dry-chemical extinguishing system” means a system supplying a powder composed of small particles, usually of sodium bicarbonate, potassium bicarbonate, urea-potassium-based bicarbonate, potassium chloride, or mono-ammonium phosphate, with added particulate material supplemented by special treatment to provide resistance to packing, resistance to moisture absorption, and the proper flow capabilities.

“Automatic fire extinguishing system” means a system of devices and equipment that automatically detects a fire and discharges an approved fire extinguishing agent onto or in the area of a fire and includes automatic sprinkler systems, carbon dioxide extinguishing systems, deluge systems, automatic dry-chemical extinguishing systems, foam extinguishing systems, and halogenated extinguishing systems, or other equivalent fire extinguishing technologies recognized by the fire extinguishing system contractors advisory board.

“Automatic sprinkler system” means an integrated fire protection sprinkler system usually activated by heat from a fire designed in accordance with fire protection engineering standards and includes a suitable water supply. The portion of the system above the ground is a network of specially sized or hydraulically designed piping installed in a structure or area, generally overhead, and to which automatic sprinklers are connected in a systematic pattern.

“Carbon dioxide extinguishing system” means a system supplying carbon dioxide from a pressurized vessel through fixed pipes and nozzles and includes a manual or automatic actuating mechanism.

“Clean agent” means an electrically nonconducting, volatile, or gaseous fire extinguishant that does not leave a residue upon evaporation.

“Deluge system” means a sprinkler system employing open sprinklers attached to a piping system connected to a water supply through a valve that is opened by the operation of a detection system installed in the same area as the sprinklers.

“Fire extinguishing system contractor” or “contractor” means a person engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, alteration, addition, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state.

“Foam extinguishing system” means a special system discharging foam made from concentrates, either mechanically or chemically, over the area to be protected.

“Halogenated extinguishing system” means a fire extinguishing system using one or more atoms of an element from the halogen chemical series of fluorine, chlorine, bromine, and iodine.

“Maintenance inspection” means periodic inspection and certification completed by a fire extinguishing system contractor. For purposes of this chapter, “maintenance inspection” does not include an inspection completed by a local

building official, fire inspector, or insurance inspector, when acting in an official capacity.

“Responsible managing employee” means an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor and who is designated as the responsible managing employee for a fire extinguishing system contractor and meets the requirements for a responsible managing employee established in rule 661—275.3(100C).

“Special hazards suppression system” means a fire extinguishing system utilizing fire detection and control methods to release an extinguishing agent, other than water connected to a dedicated fire protection water supply.

661—275.3(100C) Responsible managing employee. Each fire extinguishing system contractor shall designate a responsible managing employee and may designate one or more alternate responsible managing employees.

275.3(1) The responsible managing employee shall be designated in the application for certification, and if the responsible managing employee is no longer acting in that role, the contractor shall notify the fire marshal, in writing, within 30 calendar days, on a form designated by the fire marshal.

275.3(2) If the responsible managing employee is no longer acting in that role and the contractor has designated an alternate responsible managing employee, the alternate responsible managing employee shall become the responsible managing employee and the contractor shall so notify the fire marshal, in writing, within 30 calendar days of the day on which the preceding responsible managing employee ceased to act in that role. If the contractor has designated more than one alternate responsible managing employee, the notice to the fire marshal shall indicate which alternate responsible managing employee has assumed the position of responsible managing employee.

275.3(3) If the responsible managing employee designated by a fire extinguishing system contractor is no longer acting in the role of responsible managing employee and the contractor has not designated an alternate responsible managing employee, the contractor shall designate a new responsible managing employee and shall notify the fire marshal, in writing, of the designation within six months, on a form designated by the fire marshal. If the fire marshal has not been notified of the appointment of a new responsible managing employee within six months of the date on which the former responsible managing employee ceased to act in that capacity, the fire marshal shall suspend the certification of the fire extinguishing system contractor.

275.3(4) A responsible managing employee or an alternate responsible managing employee shall meet either of the following requirements:

a. Current certification by the National Institute for Certification in Engineering Technologies at level III or above in fire protection technology, for automatic sprinkler system layout, special hazards suppression systems, or both.

b. Current licensure as a professional engineer by the Iowa engineering and land surveying examining board, with competence in fire extinguishing system design.

EXCEPTION: Prior to April 1, 2008, a fire extinguishing system contractor may receive provisional certification if the person designated as the contractor’s responsible managing employee has initiated procedures for obtaining certification by the National Institute for Certification in Engineering Technologies at a level III in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both, and has satisfactorily completed testing which is offered by a third party and has been approved by the fire marshal, for competency in fire protection

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technology for automatic sprinkler system layout, special hazards suppression systems, or both. The contractor shall provide the fire marshal with notification and documentation of the required certification within 30 days after the contractor's provisional certification was initially issued.

After one year of provisional certification of the contractor, the responsible managing employee shall have current certification by the National Institute for Certification in Engineering Technologies at level II or above in fire protection technology for automatic sprinkler system layout, special hazards suppression systems, or both. Documentation that this requirement has been met shall be provided by the contractor to the fire marshal within 30 days after the one-year anniversary of the effective date of the initial provisional certification.

Provisional certification shall not be recognized on or after April 1, 2009.

661—275.4(100C) Certification requirements. A fire extinguishing system contractor shall meet all of the following requirements in order to receive certification from the fire marshal. All requirements shall continue to be met throughout the period of certification. The contractor shall notify the fire marshal, in writing, on a form designated by the fire marshal, within 30 calendar days if any requirement does not continue to be met.

275.4(1) The contractor shall designate a responsible managing employee as provided in rule 661—275.3(100C).

275.4(2) The contractor shall maintain general and complete operations liability insurance for the layout, installation, repair, alteration, addition, maintenance, and inspection of automatic fire extinguishing systems in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The contractor shall cease operation immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A contractor shall not initiate any installation of a fire extinguishing system which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the contractor has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

275.4(3) The contractor shall maintain current registration as a contractor with the labor services division of the Iowa workforce development department in compliance with Iowa Code chapter 91C and 875—Chapter 150 of the Iowa Administrative Code.

275.4(4) The contractor shall maintain compliance with all other provisions of law related to operation in the state of Iowa.

661—275.5(100C) Applications and fees.

275.5(1) Application. Any contractor seeking certification as a fire extinguishing system contractor shall submit a completed application form to the fire marshal. The application shall be filed no later than 30 days prior to the date on which certification is required or on which an existing certification expires. An application form may be obtained from the fire marshal or from the Web site of the fire extinguishing system contractor certification program (www.state.ia.us/government/dps/fm/fesccep). The application form shall be

submitted with all required attachments and the required application fee established in subrule 275.5(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

275.5(2) Application fee. The fee for an initial or renewal application is \$100 and is nonrefundable.

275.5(3) Certification fee. The certification fee is \$400 per year.

EXCEPTION: The certification fee for certifications which are effective other than on April 1 each year shall be prorated on a quarterly basis. If a certification is effective after April 1 and no later than June 30, the certification fee shall be \$400. The certification fee for a certification which becomes effective between July 1 and September 30 shall be \$300. The certification fee for a certification which becomes effective between October 1 and December 31 shall be \$200. The certification fee for a certification which becomes effective between January 1 and March 31 shall be \$100.

275.5(4) Payment. The application fee and the certification fee shall be submitted by draft, check, or money order in the amount of \$500, payable to "Fire Extinguishing System Contractor Certification Program." If the application is denied, the certification fee shall be returned to the applicant.

If an application is submitted for a certification for which the certification fee is prorated, the application shall be accompanied by a check, draft, or money order in the amount of the prorated certification fee plus \$100, payable to "Fire Extinguishing System Contractor Certification Program."

275.5(5) Amended certification fee. The fee for issuance of an amended certification is \$100. The fee shall be submitted with the request for an amended certification. A contractor shall request and the fire marshal shall issue an amended certification for any of the following:

a. A change in the designation of the responsible managing employee;

b. A change in insurance coverage; or

c. A change in any other material information included in or with the initial or renewal application.

275.5(6) Attachments. Required attachments to the application for certification include, but are not limited to, the following:

a. Documentation verifying that the contractor has in force the insurance coverage required by subrule 275.4(2). The documentation shall include an acknowledgment that the insurance carrier is aware that the contractor is engaged in and covered for the installation of fire extinguishing systems. The documentation may consist of a letter from the insurance carrier, or a copy of the insurance certificate with an endorsement showing the required information.

b. Documentation verifying that the person designated as the responsible managing employee and any persons designated as alternate responsible managing employees have met the applicable certification requirements.

661—275.6(100C) Complaints. Complaints regarding the performance of any certified contractor, failure of a certified contractor to meet any of the requirements established in Iowa Code chapter 100C or this chapter or any other provision of law, or operation as a fire extinguishing system contractor without certification may be filed with the fire marshal. Complaints should be addressed as follows:

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Fire Extinguishing System Contractors Certification Program

Fire Marshal Division
Iowa Department of Public Safety
401 S.W. 7th Street, Suite N
Des Moines, Iowa 50309

Complaints may be addressed by electronic mail to fesccp@dps.state.ia.us or by facsimile to (515)242-6299.

Complaints should be as specific as possible and shall clearly identify the contractor against whom the complaint is filed. A form which may be used to file complaints is available on the Web site of the fire extinguishing system contractors certification program, at <http://www.state.ia.us/government/dps/fm/fesccp>. Complaints may be filed without using the complaint form provided, but shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

661—275.7(100C) Denial, suspension, revocation of certification; civil penalties; and appeals. The fire marshal may deny, suspend or revoke the certification of a contractor, or assess a civil penalty to the contractor, if any provision of these rules or any other provision of law related to operation as a fire extinguishing system contractor are violated.

275.7(1) Denial. The fire marshal may deny an application for certification:

a. If the applicant makes a false statement on the application form or in any other submission of information required for certification. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for certification established in this chapter.

c. If the applicant is currently barred for cause from acting as a fire extinguishing system contractor in another jurisdiction.

d. If the applicant has previously been barred for cause from operating in another jurisdiction as a fire extinguishing system contractor and if the basis of that action reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have been previously barred for cause from operating as a fire extinguishing system contractor in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to how it reflects upon the likelihood that the applicant would operate with integrity as a certified contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

e. If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire extinguishing system contractor. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to how it reflects upon the likelihood that the applicant would operate with integrity as a certified contractor. If an applicant is denied under this provision, the applicant shall be notified of the specific reasons for the denial.

275.7(2) Suspension. A suspension of a certification may be imposed by the fire marshal for any violation of these rules or Iowa Code chapter 100C or for a failure to meet any legal requirement to operate as a fire extinguishing system contractor in this state. Failure to provide any notice to the fire marshal as provided in these rules shall be grounds for sus-

pension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the certification even after the period of the suspension.

275.7(3) Revocation. A revocation is a termination of a certification. Certifications may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire extinguishing system incorrectly installed by a certified contractor.

A certification which has been revoked shall not be reinstated for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected.

275.7(4) Civil penalties. The fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

275.7(5) Suspension or revocation for nonpayment of child support. The following procedures shall apply to actions taken by the department on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the certified contractor by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the contractor may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of certification of a contractor, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the contractor.

c. Contractors shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. All applicable fees for an application or reinstatement must be paid by the contractor before a certificate will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a certification or has suspended or revoked a certification pursuant to Iowa Code chapter 252J.

e. In the event a contractor files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the department to proceed. For the purpose of determining the effective date of revocation or suspension of the certification, the department shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively within the department of public safety.

NOTE: The procedures established in subrule 275.7(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory

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requirements for an agency which administers a certification program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

275.7(6) Appeals. Any denial, suspension, or revocation of a certification, or any civil penalty imposed upon a certified contractor under this rule, other than one imposed pursuant to subrule 275.7(5) may be appealed by the contractor within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement Iowa Code chapter 100C.

ARC 4769B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” Chapter 46, “Withholding,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues,” Iowa Administrative Code.

These amendments are proposed as a result of 2005 Iowa Acts, chapter 150.

Item 1 amends subrule 42.2(10), paragraph “a,” for individual income tax to provide that the new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. In addition, this subrule is amended to provide that the investment tax credit must be amortized over a five-year period for projects approved under the enterprise zone program after July 1, 2005.

Item 2 amends subrule 42.2(10), paragraph “b,” to provide that an eligible business under the enterprise zone program whose project involves biotechnology-related processes may elect to receive a refund of unused investment credit for tax years ending on or after July 1, 2005.

Item 3 amends subrule 42.2(11) and the implementation clause for rule 701—42.2(422) to provide for an additional research activities credit for expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa.

Item 4 amends rule 701—42.19(15) for individual income tax to provide that the new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program.

Item 5 adopts new rule 701—42.27(15), which provides for tax credits available under the high quality jobs creation program for individual income tax.

Item 6 adopts new rule 701—42.28(15E,422), which provides for an economic development region revolving fund tax credit for individual income tax.

Item 7 amends the implementation clause for rule 701—46.9(15) to correct a cross reference to an Iowa Code section.

Item 8 amends rule 701—52.10(15) to provide that the new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program.

Item 9 rescinds rule 701—52.14(422) and adopts new rule 701—52.14(15E), which provides for tax credits available for businesses approved under the enterprise zone program.

Item 10 amends rule 701—52.22(15) for corporation income tax to provide that the new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. This is similar to the change in Item 4.

Item 11 adopts new rule 701—52.28(15), which provides for tax credits available under the high quality job creation program for corporation income tax. This is similar to the change in Item 5.

Item 12 adopts new rule 701—52.29(15E,422), which provides for an economic development region revolving fund tax credit for corporation income tax. This is similar to the change in Item 6.

Item 13 amends rule 58.12(15) for franchise tax to provide that the new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. This is similar to the change in Items 4 and 10.

Item 14 adopts new rule 701—58.17(15), which provides for tax credits available under the high quality job creation program for franchise tax.

Item 15 adopts new rule 701—58.18(15E,422), which provides for an economic development region revolving fund tax credit for franchise income tax. This is similar to the change in Items 6 and 12.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than January 23, 2006, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 10, 2006. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of

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Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by January 13, 2006.

These amendments are intended to implement Iowa Code chapters 15, 15E and 422 as amended by 2005 Iowa Acts, chapter 150.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **42.2(10)**, paragraph "a," introductory paragraph, as follows:

a. General rule. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available for businesses approved by the Iowa department of economic development under the new jobs and income program and the enterprise zone program. *The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.27(15) for information on the investment tax credit under the high quality job creation program. Any investment tax credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005.* The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken. *For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 42.27(2).*

ITEM 2. Amend subrule **42.2(10)**, paragraph "b," introductory and first unnumbered paragraphs, as follows:

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return. *For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit.*

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between

May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year *for this program and eligible businesses described in subrule 42.27(2)*. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

ITEM 3. Amend subrule **42.2(11)** by adding **new** paragraphs "d" and "e" and amending the implementation clause for rule 701—42.2(422) as follows:

d. An eligible business approved under the new jobs and income program prior to July 1, 2005, is eligible for an additional research activities credit as described in subrule 52.7(4). An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in subrule 52.7(5).

e. For tax years ending on or after July 1, 2005, for eligible businesses approved under the enterprise zone program and the high quality job creation program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. These expenses are not eligible for the federal credit for increasing research activities. These innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program shall not exceed \$1 million in the aggregate.

These expenses are available only for the additional research activities credit set forth in subrule 42.2(11), paragraph "d," for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.27(1) for businesses approved under the high quality job creation program. These expenses are not available for the research activities credit set forth in subrule 42.2(11), paragraphs "a" and "b."

This rule is intended to implement Iowa Code sections 15.333 as amended by 2005 Iowa Acts, chapter 150, 422.10, 422.11A, 422.12 and 422.12B.

ITEM 4. Amend rule 701—42.19(15), introductory paragraph, as follows:

701—42.19(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, ~~House File 677~~ chapter 125, section 4. *The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—42.27(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.*

ITEM 5. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.27(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job

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creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of 2005 Iowa Acts, chapter 150, section 44. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

42.27(1) Research activities credit. An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 42.2(11), paragraphs “a” and “b.” The research activities credit is subject to the threshold amounts of qualifying investment set forth in department of economic development 261—subrule 68.4(7).

42.27(2) Investment tax credit.

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned \$100,000 of investment tax credits for new investment made in 2006. The business can claim \$20,000 of investment tax credits for each of the years from 2006 through 2010. The \$20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the \$20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 42.2(10). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol, as provided in subrule 42.2(10). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a por-

REVENUE DEPARTMENT[701](cont'd)

tion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

42.27(3) Determination of tax credit amounts. The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

a. If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“a” for the amount of tax credits that may be claimed.

b. If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“b” for the amount of tax credits that may be claimed.

c. An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—42.25(15H).

This rule is intended to implement Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150.

ITEM 6. Amend 701—Chapter 42 by adopting the following **new** rule:

701—42.28(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The tax credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by

the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2005 Iowa Acts, chapter 150, sections 10 and 13.

ITEM 7. Amend the implementation clause for rule **701—46.9(15)** as follows:

This rule is intended to implement Iowa Code sections 45.331 and 15E.196 and 2005 Iowa Acts, chapter 150, section 54.

ITEM 8. Amend rule 701—52.10(15), introductory paragraph, as follows:

701—52.10(15) New jobs and income program tax credits. For tax years ending after May 1, 1994, for programs approved after May 1, 1994, *but before July 1, 2005*, an investment tax credit under Iowa Code section 15.333 and an additional research activities credit under Iowa Code section 15.335 are available to an eligible business. *The new jobs and income program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the investment tax credit and additional research activities credit under the high quality job creation program. Any investment tax credit and additional research activities credit earned by businesses approved under the new jobs and income program prior to July 1, 2005, remains valid, and can be claimed on tax returns filed after July 1, 2005.*

ITEM 9. Rescind rule 701—52.14(422) and adopt the following **new** rule in lieu thereof:

701—52.14(15E) Enterprise zone tax credits. For tax years ending after July 1, 1997, for programs approved after July 1, 1997, a business which qualifies under the enterprise zone program is eligible to receive tax credits. An eligible business under the enterprise zone program must be approved by the Iowa department of economic development and meet the requirements of Iowa Code section 15E.193. The administrative rules for the enterprise zone program for the Iowa department of economic development may be found at 261—Chapter 59.

52.14(1) Supplemental new jobs credit from withholding. An eligible business approved under the enterprise zone program is allowed the supplemental new jobs credit from withholding as provided in subrule 46.9(1).

52.14(2) Investment tax credit. An eligible business approved under the enterprise zone program is allowed an investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of the eligible business.

REVENUE DEPARTMENT[701](cont'd)

The provisions under the new jobs and income program for the investment tax credit described in rule 701—52.10(15) are applicable to the enterprise zone program with the following exceptions:

a. The corporate tax credit for certain sales taxes paid by a developer described in subrule 52.10(5) does not apply for the enterprise zone program.

b. For projects approved on or after July 1, 2005, under the enterprise zone program, the investment tax credit will be amortized over a five-year period, as described in subrule 52.28(2).

c. For tax years ending on or after July 1, 2005, an eligible business approved under the enterprise zone program whose project primarily involves biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment credit as described in subrule 52.10(4).

52.14(3) Research activities credit. An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in subrule 52.7(5).

For tax years ending on or after July 1, 2005, for eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program described in subrule 52.28(1) shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 52.7(5) for businesses in enterprise zones and the additional research activities credit set forth in subrule 52.28(1) for businesses approved under the high quality job creation program, and are not applicable to the research activities credit set forth in subrule 52.7(3).

52.14(4) Repayment of incentives. Effective July 1, 2003, eligible businesses in an enterprise zone may be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

This rule is intended to implement Iowa Code section 15E.193 and Iowa Code section 15E.196 as amended by 2005 Iowa Acts, chapter 150.

ITEM 10. Amend rule 701—52.22(15), introductory paragraph, as follows:

701—52.22(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, *House File 677 chapter 125, section 4. The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rule 701—52.28(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned*

by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.

ITEM 11. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.28(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of 2005 Iowa Acts, chapter 150, section 44. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

52.28(1) Research activities credit. An eligible business approved under the high quality job creation program is eligible for an additional research activities credit as described in subrule 52.7(4).

Research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities. For purposes of this subrule, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the high quality job creation program and the enterprise zone program shall not exceed \$1 million in the aggregate.

These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in this subrule and are not applicable to the research activities credit set forth in subrule 52.7(3). The research activities credit is subject to the threshold amounts of qualifying investment set forth in Iowa department of economic development 261—subrule 68.4(7).

52.28(2) Investment tax credit.

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in Iowa department of economic development 261—subrule 68.4(7). New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

In addition, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agree-

REVENUE DEPARTMENT[701](cont'd)

ment with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

The investment tax credit can be claimed in the tax year in which the qualifying assets are placed in service. The investment tax credit will be amortized over a five-year period. Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

EXAMPLE: An eligible business which files tax returns on a calendar-year basis earned \$100,000 of investment tax credits for new investment made in 2006. The business can claim \$20,000 of investment tax credits for each of the years from 2006 through 2010. The \$20,000 of investment tax credit that can be claimed in 2006 can be carried forward to the 2007-2013 tax years if the entire credit cannot be claimed on the 2006 return. Similarly, the \$20,000 investment tax credit that can be claimed in 2007 can be carried forward to the 2008-2014 tax years if the entire credit cannot be claimed on the 2007 return.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual.

b. Investment tax credit—value-added agricultural products or biotechnology-related processes. An eligible business whose project primarily involves the production of value-added agricultural products or uses biotechnology-related processes may elect to receive a refund for all or a portion of an unused investment tax credit. An eligible business includes a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves the production of ethanol.

Eligible businesses that elect to receive a refund shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development shall not issue tax credit certificates for more than \$4 million during a fiscal year to eligible businesses for this program and the enterprise zone program described in subrule 52.14(2). If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development shall issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code whose project primarily involves

the production of ethanol, as provided in subrule 52.10(4). For value-added agricultural projects involving ethanol, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development shall issue a tax credit certificate to each member on the list.

c. Repayment of benefits. If an eligible business fails to maintain the requirements of the high quality job creation program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure of the eligible business to maintain the requirements of the high quality job creation program because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

An eligible business in the high quality job creation program may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

If, within five years of purchase, the eligible business sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which a tax credit was claimed under this subrule, the income tax liability of the eligible business shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

52.28(3) Determination of tax credit amounts. The amount of tax credit claimed under the high quality job creation program shall be based on the number of high quality jobs created and the amount of qualifying investment made as determined by the Iowa department of economic development.

a. If the high quality jobs have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“a” for the amount of tax credits that may be claimed.

b. If the high quality jobs have a starting wage, including benefits, equal to or greater than 160 percent of the average county wage, see Iowa department of economic development 261—paragraph 68.4(7)“b” for the amount of tax credits that may be claimed.

c. An eligible business approved under the high quality job creation program is not eligible for the wage-benefits tax credit set forth in rule 701—52.25(15H).

This rule is intended to implement Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150.

REVENUE DEPARTMENT[701](cont'd)

ITEM 12. Amend 701—Chapter 52 by adopting the following **new** rule:

701—52.29(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

If a taxpayer is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 and 2005 Iowa Acts, chapter 150, section 10.

ITEM 13. Amend rule 701—58.12(15), introductory paragraph, as follows:

701—58.12(15) New capital investment program tax credits. Effective for tax periods beginning on or after January 1, 2003, a business which qualifies under the new capital investment program is eligible to receive tax credits. An eligible business under the new capital investment program must be approved by the Iowa department of economic development and meet the qualifications of 2003 Iowa Acts, ~~House File 677 chapter 125~~, section 4. *The new capital investment program was repealed on July 1, 2005, and has been replaced with the high quality job creation program. See rules 701—52.28(15) and 701—58.17(15) for information on the tax credits available under the high quality job creation program. Any tax credits earned by businesses approved under the new capital investment program prior to July 1, 2005, remain valid, and can be claimed on tax returns filed after July 1, 2005.*

ITEM 14. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.17(15) High quality job creation program. Effective for tax periods ending on or after July 1, 2005, a business which qualifies under the high quality job creation program is eligible to receive tax credits. The high quality job creation program replaces the new jobs and income program and the new capital investment program. An eligible business under the high quality job creation program must be approved by the Iowa department of economic development and meet the qualifications of 2005 Iowa Acts, chapter 150, section 44. The administrative rules for the high quality job creation program for the Iowa department of economic development may be found at 261—Chapter 68.

For information on what credits can be taken under this program, how the investment tax credit is computed and other details about this program, see rule 701—52.28(15). However, the research credit described in subrule 52.28(1) is not available for franchise tax filers.

This rule is intended to implement Iowa Code chapter 15 as amended by 2005 Iowa Acts, chapter 150.

ITEM 15. Amend 701—Chapter 58 by adopting the following **new** rule:

701—58.18(15E,422) Economic development region revolving fund tax credit. Effective for tax years ending on or after July 1, 2005, a taxpayer who makes a contribution to an economic development region revolving fund may claim a tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's contribution to the economic development region revolving fund approved by the Iowa department of economic development. The administrative rules for the economic development region revolving fund tax credit for the Iowa department of economic development may be found at 261—Chapter 32.

The total amount of economic development region revolving fund tax credits available shall not exceed \$2 million per fiscal year. The tax credit shall not be carried back to a tax year prior to the year in which the taxpayer redeems the credit. The economic development region revolving fund tax credit is not transferable to any other taxpayer.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following ten years or until used, whichever is the earlier.

This rule is intended to implement 2005 Iowa Acts, chapter 150, section 10, and Iowa Code section 422.60 as amended by 2005 Iowa Acts, chapter 150, section 15.

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SECRETARY OF STATE[721]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

The proposed amendment revises the instructions for the application form for a temporary waiver of accessibility requirements for polling places. The revised instructions increase the documentation required to apply for a waiver. In the past year, the Secretary of State has distributed over \$600,000 in grant funds made available under the Help America Vote Act (HAVA). These grants were given to counties to make polling places accessible to persons with disabilities. In March 2005, the Secretary of State informed all counties that, after 2005, waivers would be granted only if substantial documentation supported the need for such waivers.

The proposed amendment requires that an auditor applying for a waiver submit two additional types of documentation: letters from three elected officials from governing bodies that include the precinct (city officials, county supervisors, or township officials) supporting the finding that there

SECRETARY OF STATE[721](cont'd)

is no accessible place within the precinct that can be used for a polling place and a statement explaining why it is not reasonable to move the polling place to another, accessible location outside the precinct or to combine the precinct with another adjacent precinct that has an accessible polling location. The revised instructions also remind auditors that their duty is to make buildings used as polling places accessible on election day; buildings used for polling places are not necessarily required to be permanently accessible.

Any interested person may make written suggestions or comments on this proposed amendment until 5 p.m. on January 10, 2006. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319. Persons who want to convey their views orally should contact the Secretary of State's office at (515)281-5823 or at the Secretary of State's office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by 5 p.m. on January 10, 2006.

This amendment is intended to implement Iowa Code section 49.21.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **21.50(7)**, instructions for the application for a temporary waiver of accessibility requirements, numbered paragraph "1," to read as follows:

1. Describe why you are unable to provide an accessible polling place for the precinct.

a. Include the reasons that the polling place you have selected cannot be made accessible for the next election. Remember, the polling place must be accessible on election days. Buildings used for polling places are not necessarily required to be permanently accessible.

b. Include letters from three elected officials from governing bodies that include this precinct (city officials, county supervisors, or township officials) supporting your finding that there is no accessible place within the precinct that can be used for a polling place.

c. Explain why it is not reasonable to move this polling place to another, accessible location outside the precinct or to combine this precinct with another adjacent precinct that has an accessible polling location.

ARC 4754B

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 8D.3, the Iowa Telecommunications and Technology Commission

hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization," Chapter 5, "Purchasing," and Chapter 17, "Miscellaneous," Iowa Administrative Code.

The proposed amendments are designed to update the Iowa Telecommunications and Technology Commission's rules to reflect recent organizational changes and to implement statutory changes made to Iowa Code chapter 8D pursuant to 2005 Iowa Acts, chapter 100. These amendments reflect recent changes in organizational structure creating agency efficiencies, comply with legislation regarding noticing bids and solicitations, and add detail to the transfer and disposal of assets by the agency. The proposed amendments also clarify agency administrative rules and are mostly non-substantive in nature.

Any interested person may comment either orally or in writing on the proposed amendments on or before January 10, 2006. Comments should be directed to Ron Koontz, Administrative Rules Coordinator, Iowa Telecommunications and Technology Commission, P.O. Box 587, Johnston, Iowa 50131-0587; telephone (515)725-4708; E-mail ron.koontz@icn.state.ia.us.

There will be a public hearing on January 10, 2006, at 1 p.m. in the Thompson Conference Room, Building W-4, Camp Dodge, Johnston, Iowa, at which time all interested parties may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Persons with special needs should contact the Commission prior to the hearing if accommodations are needed.

These amendments are intended to implement Iowa Code chapter 8D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 751—1.5(17A,8D), catchwords, and subrule 1.5(2) as follows:

751—1.5(17A,8D) Administrative divisions elements of the commission.

1.5(2) Administrative divisions elements. In order to carry out the functions of the commission, the following divisions/bureaus/offices have been established:

a. The office of the deputy director is responsible for agency information systems functions, legislative liaison, public information, facilities management and administrative support to the commission. The office also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's World Wide Web page on the Internet.

a b. The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing and contracting activities, and other duties as assigned from time to time.

b c. The operations and engineering division bureau is responsible for strategic and long-range planning and provisioning of video services, data/Internet services, and voice services for authorized users. It is responsible for all operational aspects of the fiberoptic network.

d. The division engineering bureau is responsible for the technical operation of the fiberoptic network, including re-

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751](cont'd)

search and development, and network systems support. It oversees all physical aspects of the network's equipment and circuits and performs other duties as assigned from time to time.

e. The service-delivery division customer service and provisioning bureau is responsible for the delivery of services related to the operation of the network.

f. This division The sales and marketing bureau coordinates the activities between the engineers, individual sites, and authorized users. It is responsible for cost estimates for a site, tracking service requests, executing installation services, maintaining a circuit data base, and assisting authorized users in finding the best structure to meet the users' needs. ~~The division provides office support for the commission including processing payrolls, records management, facility management, mail, provision of common supplies, central office telephone service, word processing, data entry, reception services, personnel, labor relations, and parking/access coordination. The division also provides information and education to the public about the commission and the fiberoptic network and maintains the commission's World Wide Web page on the Internet. This division monitors legislation and provides the legislative liaison for the commission. Members of this division also perform other duties as assigned from time to time.~~

ITEM 2. Amend subrule 5.2(1), paragraph "a," as follows:

a. A formal invitation to bid may be required for any item if cost is the major criterion for selection. Other criteria may also be used, provided that the commission describes the criteria in the bid documents. The commission shall prepare a written invitation-to-bid form and shall transmit the form either by mail, electronically, or digitally to selected vendors in the business of providing the goods or services sought by the commission. ~~The commission shall comply with the notice requirements for targeted small businesses. The bid shall also be posted on the Internet.~~

ITEM 3. Amend rule 751—5.4(8D) as follows:

751—5.4(8D) Advertising solicitations Notice of bids or requests. ~~Notice of formal bids and formal requests for proposals issued by the commission, shall be posted on the Internet.~~

5.4(1) *The commission shall post solicitations of formal bids or requests on the commission's Internet Web page.*

5.4(2) *The commission expressly adopts 11 IAC 105.7(1) and shall enforce the notice requirements and consequences for insufficient notice contained therein.*

5.4(3) *All contracts of the commission shall comply with the legal notice requirements relating to targeted small businesses.*

ITEM 4. Amend rule 751—17.3(8D), catchwords, as follows:

751—17.3(8D) Disposal Transfer and disposal of assets.

ITEM 5. Add new subrules 17.3(4) and 17.3(5) as follows:

17.3(4) Notwithstanding any contrary provision in this chapter or these rules, and consistent with Iowa Code section 8D.12, the commission may dispose of unnecessary or unfit property under its ownership or control by sale, auction, broker, trade, consignment, gift, transfer, or any manner in which the commission determines will fairly dispose of the property to any branch of the government of the state of Iowa, any Iowa state agency, or any institution under the control of the Iowa board of regents. Contrary provisions of sub-

rules 17.3(1) to 17.3(3) do not apply to the disposition of property pursuant to this subrule. Dispositions pursuant to this subrule are valid so long as the executive director of the Iowa communications network determines that the transfer is in the best interests of the state of Iowa.

17.3(5) Notwithstanding any contrary provision in this chapter or these rules, upon request by an authorized user, the commission may procure, in accordance with all applicable administrative rules and provisions of Iowa Code chapter 8D, any telecommunications equipment, devices or services requested by or on behalf of an authorized user. The commission may further transfer the title to, or benefit of, the telecommunications equipment, devices or services to the authorized user. The commission may accordingly bill the authorized user through the commission's regular process for the telecommunications equipment, devices or services or for the use of such telecommunications equipment, devices or services. Nothing in this subrule shall permit the commission to purchase or transfer title to Part III fiber as defined in Iowa Code section 8D.13(2)“c“ unless such purchase or transfer is authorized by Iowa Code chapter 8D or an Act of the legislature approved by the governor.

NOTICE—PUBLIC FUNDS INTEREST RATES

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for December is 6.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants Maximum 6.0%
74A.4 Special Assessments Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective December 9, 2005, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

NOTICE—PUBLIC FUNDS INTEREST RATES(cont'd)

TIME DEPOSITS

7-31 days	Minimum 1.65%
32-89 days	Minimum 2.25%
90-179 days	Minimum 2.65%
180-364 days	Minimum 3.00%
One year to 397 days	Minimum 3.25%
More than 397 days	Minimum 4.40%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 4746B

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)“b.”

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 96.11, the Director of the Workforce Development Department hereby gives Notice of Intended Action to amend Chapter 23, “Employer’s Contributions and Charges,” Iowa Administrative Code.

New rule 871—23.32(96) is proposed for adoption as mandated by both federal law and 2005 Iowa Acts, House File 764, passed by the Iowa General Assembly.

The proposed amendment to subparagraph 23.43(3)“b”(3) provides that overpayments during the processing of an appeal reversal of an allowance pursuant to Iowa Code section 96.6(2) will be waived and not charged to the employer’s account.

The proposed amendment to paragraph 23.82(1)“a” provides that employee-leasing companies providing construction workers will be classified as construction employers.

The proposed amendment to the implementation clause of rule 871—23.82(96) corrects the citation to the Iowa Code.

The Department has determined that these amendments will not have an impact on small business within the meaning of Iowa Code section 17A.4A.

This proposed rule making does not include a waiver provision because 871—Chapter 41 provides the specified situations for waiver of the Department of Workforce Development’s rules.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m. on January 10, 2006, to LeLoie Dutemple, Workforce Development Department, Unemployment Insurance Services Division, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on January 10, 2006, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who wish to convey their views orally should contact LeLoie Dutemple at (515)281-5526 or at the above address.

These amendments are intended to implement Iowa Code sections 96.6(2) and 96.7(2)“c”(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend 871—Chapter 23 by adopting the following **new** rule:

871—23.32(96) Mandatory and prohibited successorships.

23.32(1) This rule applies to the mandatory successorship in Iowa Code section 96.7(2)“b”(2) and the prohibited successorship in Iowa Code section 96.7(2)“b”(3). If one employing unit receives the organization, trade or business, or a portion thereof of an employing unit and there is substantially common ownership, management or control of the two, the attributable unemployment experience will be transferred. This does not require a transfer of substantially all of the assets nor does it require the transferred portion to be segregable or identifiable. The acquiring employer must continue to operate the organization, trade or business or must transfer operation to an entity with substantially common ownership, management or control with the acquiring entity. Mandatory successorship also applies when the acquirer was not an employing unit prior to the transfer.

a. A transfer of staff and the business activity of that staff to an acquiring employer unit which continues to operate the portion of the business will establish mandatory successor liability.

b. The mandatory and prohibited successorships contained in Iowa Code sections 96.7(2)“b”(2) and (3) apply to corporations, limited liability companies, government or governmental subdivisions or agencies, business trusts, estates, trusts, partnerships, sole proprietorships or associations, or any other legal entity as defined in Iowa Code chapter 96.

c. “Substantially common ownership, management or control” is determined from the facts of a particular case. Among the factors to be considered are:

- (1) The authority to make policy decisions.
- (2) The authority to perform personnel actions.
- (3) Direction and control of the day-to-day operations.
- (4) Financial investment.

(5) Substantial or complete ownership by the same legal entity or entities.

(6) Ability to conduct or liability for financial transactions on behalf of the business.

(7) Authority to commit the business assets.

(8) Management includes direction or overall supervision by an individual or group of individuals.

d. For a mandatory full successorship the tax rate shall be established as provided in subrule 23.29(2), and for a mandatory partial successorship the tax rate shall be established as provided in subrule 23.32(4).

23.32(2) In determining whether or not an acquiring entity continues to operate an organization, trade or business as used in Iowa Code section 96.7(2)“b”(2), the following rules apply.

a. The acquiring entity continues the ongoing business operation (taking into account any seasonal or prior operational pattern), and continues the same business activity as the prior employer. A temporary cessation of the business

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

activity by the acquiring entity will not constitute a discontinuance of the business.

b. The acquiring entity, not having operated the business, reassigns or otherwise transfers the operation of the business to a third-party entity that has substantially common ownership, management or control with the acquiring entity. The third party is considered to be continuing the operation of the original entity.

23.32(3) Prohibited successor liability. Successor liability is prohibited when the department finds that a legal entity that is not subject to Iowa Code chapter 96 at the time of acquisition (regardless of whether or not common ownership, management or control exists) acquires an organization, trade or business solely or primarily for the purpose of obtaining a lower rate of contribution. Factors to be considered include:

a. The existing employer account has a tax rate less than would be assigned to a new employer,

b. The cost of acquiring the organization, trade or business as compared with any potential savings in contributions costs,

c. The acquiring entity substantially changed the organization, trade or business after a short period of time, and

d. A substantial number of new employees were hired to perform duties unrelated to the organization, trade or business operated prior to the acquisition.

23.32(4) When a mandatory transfer of a portion of a business occurs, the successor's experience and contribution rate will be determined as follows:

a. The experience transferred to the acquiring employer unit will be based on the percentage of employees moving from the predecessor to that unit.

(1) The percentage will be computed by comparing the number of employees on the successor's first quarterly report covering a complete calendar quarter to the average number of employees on the four complete quarterly reports filed by the predecessor immediately preceding the transfer. The average number of employees will be computed using only the predecessor's reports that have wages paid during those four quarters.

(2) Using this percentage, taxable wages, contributions, benefit charges and interest earned, commencing with the beginning date of the predecessor's account, will be transferred from the predecessor's account to the successor's account.

b. If the successor had no account prior to the transfer, the rate assigned will be the rate of the predecessor for the remainder of the calendar year beginning with the date of acquisition.

c. If the successor already had an account prior to the transfer, the rate for the balance of the year in which the transfer took place will be recomputed by combining the transferred experience with the employer's own experience as of the last computation date.

d. For the years following the year of acquisition, the rates will be computed using the experience of the employer combined with the transferred experience.

e. Future benefit(s) will be charged to the base period employer who reported the base period wages.

f. The department will issue a notification when the partial transfer has been completed. The determination will include notice to both parties as to their contribution rate for the current year.

g. Any rate determination resulting from a partial transfer will become final unless one or both of the parties files an appeal. For the specific procedure and requirements for perfecting an employer liability determination appeal, see rule 23.52(96).

23.32(5) Penalty contribution rate. The department may assess a penalty contribution rate of 2 percent for the current year and two subsequent years for an employer the department finds has attempted to manipulate and circumvent the proper unemployment tax rate as provided in Iowa Code sections 96.7(2)"b"(2) and (3) by deliberate nondisclosure of a material fact.

a. The employer will be notified of the penalty contribution rate on Form 95-5306, Notice of Unemployment Insurance Contribution Rate.

b. If, after a liability determination has been issued, the department discovers, based upon new facts not available to the department at the time the determination was made, that a previously nonliable entity acquired a business solely or primarily to obtain a lower tax rate, the department will amend the original determination and assign a new employer rate and may provide a penalty contribution rate.

c. Interest will accrue on unpaid penalty contributions in the same manner as on regular contributions.

This rule is intended to implement Iowa Code sections 96.7(2)"b" and 96.16(5).

ITEM 2. Amend subrule **23.43(3)**, paragraph "**b**," subparagraph (3), as follows:

(3) No overpayment shall accrue to the claimant because of payment made prior to *and during the period in which the department is processing* the reversal of the decision.

ITEM 3. Amend subrule **23.82(1)**, paragraph "**a**," as follows:

a. The construction sector is comprised of establishments primarily engaged in the construction of buildings and other structures, heavy construction (except buildings), additions, alterations, reconstruction, installation, and maintenance and repairs. Establishments engaged in demolition or wrecking of buildings and other structures, clearing of building sites, and sale of materials from demolished structures are also included. This sector also includes those establishments engaged in blasting, test drilling, landfill, leveling, earthmoving, excavating, land drainage, and other land preparation. The industries within this sector have been defined on the basis of their unique production processes. As with all industries, the production processes are distinguished by their use of specialized human resources and specialized physical capital. Construction activities are generally administered or managed at a relatively fixed place of business, but the actual construction work is performed at one or more different project sites. *Employers that provide workers primarily for construction will be classified as construction employers.*

ITEM 4. Amend rule **871—23.82(96)**, implementation sentence, as follows:

This rule is intended to conform to federal changes in the ~~Industrial Code~~ *North American Industry Classification System* and implements Iowa Code sections 96.7(3)"a"(7), 96.7(3)"d" 96.7(2), 96.7(3), 96.7(4) and 96.11(7) 96.11(1).

ARC 4752B

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 505.8 and 523.7, the Insurance Division hereby amends Chapter 7, "Domestic Stock Insurers Proxies," Iowa Administrative Code.

New rule 191—7.20(523) is necessary to recognize, permit and prescribe the applicable reporting requirements for statements of stock ownership. This amendment is a result of changes to the federal law. Iowa Code section 523.7 authorizes the Commissioner to adopt rules prescribing a reporting framework.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are impracticable because of the need for the amendment to be effective December 31, 2005, to ensure that eligible companies are able to demonstrate compliance with the federal law and therefore avoid the potential for duplicative filings and the related expenses.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective December 31, 2005, as it confers a benefit on impacted insurance companies enabling them to qualify for a federal securities law filing exemption.

This emergency filing permits the Division to implement the new provisions of the law.

This amendment is intended to implement Iowa Code section 523.7.

This amendment will become effective December 31, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Adopt **new** rule 191—7.20(523) as follows:

191—7.20(523) Statement of changes of beneficial ownership of securities.

7.20(1) Directors, executive officers, and principal stockholders of domestic insurers required to file. Every person who is directly or indirectly the beneficial owner of more than 10 percent of any class of any equity security of an insurer exempt from the filing requirements of Section 16 of the Securities Exchange Act of 1934 pursuant to Section 12(g)(2)(G) of the Act, or who is a director or an executive officer of the issuer of such security, shall file the statements required by this rule with the commissioner.

7.20(2) Time of filing.

a. An initial statement of beneficial ownership form shall be filed:

(1) Within ten days after a person becomes such beneficial owner, director, or executive officer;

(2) Within ten days after the insurer would become subject to filing requirements under Section 16 of the Securities Exchange Act of 1934 but for the exemption set forth in Section 12(g)(2)(G) of the Act; or

(3) Within ten days after the effective date of an insurer's filing of a registration statement registering a class of equity securities on a national securities exchange.

b. An annual statement of beneficial ownership form shall be filed by each director, executive officer or beneficial owner of more than 10 percent of any class of any equity security within 45 days of the end of each fiscal year.

c. A statement of changes in beneficial ownership form shall be filed by each director, executive officer or beneficial owner of more than 10 percent of any class of any equity security before the end of the second business day following the day on which a transaction resulting in a change in beneficial ownership has been executed.

7.20(3) Exceptions to the two-business-day filing deadline.

a. Definitions.

"Discretionary transaction" means a transaction pursuant to an employee benefit plan that:

1. Is at the volition of the participant;

2. Is not made in connection with the participant's death, disability, retirement or termination of employment;

3. Is not required to be made available to a plan participant pursuant to a provision of the Internal Revenue Code of 1986; and

4. Results in either an intraplan transfer involving an issuer equity securities fund or a cash distribution funded by a volitional disposition of an issuer equity security.

"Excess benefit plan" means an employee benefit plan that is operated in conjunction with a qualified plan and provides only the benefits or contributions that would be provided under a qualified plan but for any benefit or contribution limitations set forth in the Internal Revenue Code of 1986.

"Internal Revenue Code of 1986" means the Internal Revenue Code of 1986 as amended through July 1, 2005, or if later, the date provided for in Iowa Code section 422.3(5).

"Qualified plan" means an employee benefit plan that satisfies the coverage and participation requirements of Sections 410 and 401(a)(26) of the Internal Revenue Code of 1986.

"Stock purchase plan" means an employee benefit plan that satisfies the coverage and participation requirements of Sections 423(b)(3) and 423(b)(5), or Section 410, of the Internal Revenue Code of 1986.

b. Any acquisition of securities resulting from the reinvestment of dividends or interest on securities of the same issuer shall be exempt from the filing requirements under paragraph 7.20(2)"c" if the acquisition is made pursuant to a plan providing for the regular reinvestment of dividends or interest and the plan provides for broad-based participation, does not discriminate in favor of employees of the issuer, and operates on substantially the same terms for all plan participants.

c. Any transaction (other than a discretionary transaction) pursuant to a qualified plan, and excess benefit plan, or a stock purchase plan shall be exempt from the filing requirements under paragraph 7.20(2)"c" without condition.

d. The increase or decrease in the number of securities held as a result of a stock split or stock dividend applying equally to all securities of that class, including a stock dividend in which equity securities of a different issuer are distributed, shall be exempt from the filing requirements under paragraph 7.20(2)"c."

e. The acquisition or disposition of equity securities pursuant to a domestic relations order, as defined in the Internal Revenue Code of 1986, or the Employee Retirement Income Security Act, or the rules thereunder, shall be exempt from the filing requirements under paragraph 7.20(2)"c."

f. Any transaction exempt from the filing requirements under paragraph 7.20(2)"c" pursuant to 7.20(3) shall none-

INSURANCE DIVISION[191](cont'd)

theless be included in any subsequent filing required under paragraph 7.20(2)“a” or “b.”

7.20(4) Content of statements.

a. A statement filed under paragraph “a” or “b” of subrule 7.20(2) shall contain a statement of the amount of all equity securities of such issuer of which the filing person is the beneficial owner; and

b. A statement filed under paragraph “c” of subrule 7.20(2) shall indicate ownership by the filing person at the date of filing and any change in ownership since the most recent filing.

7.20(5) Electronic filing and availability.

a. A statement filed under subrule 7.20(2) may be filed electronically; and

b. The insurer (if the insurer maintains a corporate Web site) shall post each statement on its corporate Web site no later than the end of the second business day following the filing of the statement.

This rule is intended to implement Iowa Code section 523.7.

[Filed Emergency 11/30/05, effective 12/31/05]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4748B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 46, "Payroll Deduction for Additional Insurance Coverage," Iowa Administrative Code.

The purpose of this rule making is to update rules for the optional payroll deduction for additional insurance coverage. These amendments clarify rule 11—46.6(80GA,HF2262), which pertains to distribution of literature, and rule 11—46.11(80GA,HF2262), which pertains to unapproved solicitation, and add a new rule regarding reinstatement of a company after it has been terminated from the payroll deduction program.

These amendments were published under Notice of Intended Action as **ARC 4594B** in the October 26, 2005, Iowa Administrative Bulletin.

No public comments were received. The amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 70A.17.

These amendments will become effective January 25, 2006.

The following amendments are adopted.

ITEM 1. Amend rules **11—46.1(80GA,HF2262)** to **11—46.13(80GA,HF2262)** by replacing all parenthetical references to "80GA,HF2262" with references to "70A."

ITEM 2. Amend rule 11—46.6(70A) as follows:

11—46.6(70A) Distribution of literature. The state of Iowa will not distribute ~~with payroll materials~~ any literature soliciting insurance premium deductions or literature pertaining to any other matter *on behalf of any company*.

ITEM 3. Amend rule 11—46.11(70A) as follows:

11—46.11(70A) Unapproved solicitation prohibited. Salespersons or agents must follow all applicable rules prohibiting solicitation on state property. The designated company representative may schedule presentations of marketing and informational materials, provided the program administrator has given written approval of said materials and applicable rules are followed concerning approval of the date, time, and location of such presentations. *Further, use of employees' state E-mail addresses or work addresses to mass distribute marketing materials is prohibited.*

ITEM 4. Adopt **new** rule 11—46.14(70A) as follows:

11—46.14(70A) Reinstatement of company participation. A company that has been terminated from participation in the payroll deduction program may be reinstated when the company has again met program qualifications as set forth in this chapter.

ITEM 5. Amend **11—Chapter 46**, implementation clause, as follows:

These rules are intended to implement 2004 Iowa Acts, House File 2262 Iowa Code section 70A.17.

[Filed 11/30/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4749B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 53, "Pay," Iowa Administrative Code.

The purpose of this amendment is to provide compensation for an employee in a noncontract classification who increases the employee's credentials while employed by the state.

This amendment was published under Notice of Intended Action as **ARC 4589B** in the October 26, 2005, Iowa Administrative Bulletin.

No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 8A.413.

This amendment will become effective January 25, 2006.

The following **new** subrule is adopted.

53.9(6) Pay for increased credentials. An employee in a noncontract classification who successfully completes a course of study, a certificate program, or any educational program directly related to the employee's current employment is eligible to receive an increase in base pay at the discretion of the appointing authority. Granting an increase pursuant to this subrule will not affect an employee's pay increase eligibility date and may not exceed the maximum pay for the assigned job classification pursuant to subrule 53.6(2).

[Filed 11/30/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4747B

ADMINISTRATIVE SERVICES
DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104, the Department of Administrative Services hereby amends Chapter 103, "State Employee Driving Guidelines," and Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

These amendments are intended to assist in the implementation of Executive Order 41, signed by Governor Vil-sack on April 22, 2005. The purpose of amendments to Chapter 103 is to ensure that drivers of state vehicles that are capable of using fuel with 85 percent ethanol (E85) will use E85 where it is available, or will use enough of the 10 percent ethanol fuel to get drivers of state vehicles to the nearest E85 fueling facility. State fueling facilities are to be utilized where available. The purpose of the amendments to Chapter 105 is to require that specifications for replacement state vehicles are written to procure vehicles with alternative fuel capabilities or hybrid-electric vehicles, providing an equivalent vehicle is available, while also taking into account the current rule regarding life cycle costing and energy efficiency.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

In addition, a standard is specified for bulk diesel fuel procurement.

These amendments were published under Notice of Intended Action as **ARC 4590B** in the October 26, 2005, Iowa Administrative Bulletin.

No public comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 8A.311 and 8A.362 and Executive Order 41.

These amendments will become effective January 25, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [103.16, 105.2, 105.11(6), 105.11(7)] is being omitted. These amendments are identical to those published under Notice as **ARC 4590B**, IAB 10/26/05.

[Filed 11/30/05, effective 1/25/06]

[Published 12/21/05]

[For replacement pages for IAC, see IAC Supplement 12/21/05.]

ARC 4740B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby adopts a new Chapter 104, "Iowa Wine and Beer Promotion Grant Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 12, 2005, as **ARC 4583B**.

The new rules establish a grant program for the promotion of Iowa wine and beer. The rules describe the application process, eligible applicants, eligible activities and the application review process.

A public hearing was held on November 1, 2005, to receive comments about the proposed rules. No members of the public attended the hearing. Two individuals contacted the Department by telephone to convey their support of the new grant program. The final rules are identical to the proposed rules.

The Iowa Economic Development Board adopted these rules on November 17, 2005.

These rules will become effective on January 25, 2006.

These rules are intended to implement Iowa Code section 15E.117.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 104] is being omitted. These rules are identical to those published under Notice as **ARC 4583B**, IAB 10/12/05.

[Filed 11/21/05, effective 1/25/06]

[Published 12/21/05]

[For replacement pages for IAC, see IAC Supplement 12/21/05.]

ARC 4765B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendments reflect statutory amendments enacted by the General Assembly during the 2005 legislative session that involved the jurisdiction of the Board and the issuance of advisory opinions.

The amendments were published under Notice of Intended Action on September 14, 2005, as **ARC 4501B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on December 1, 2005.

These amendments are intended to implement Iowa Code section 68B.32A(11) as amended by 2005 Iowa Acts, chapter 76, section 6.

These amendments will become effective on January 25, 2006.

The following amendments are adopted.

ITEM 1. Amend subrule 1.2(3) as follows:

1.2(3) Jurisdiction. The board will issue opinions pertaining only to Iowa Code Supplement chapter 68A, Iowa Code chapter 68B, *Iowa Code section 8.7*, or rules adopted thereunder.

ITEM 2. Amend subrule 1.3(2) as follows:

1.3(2) After receiving a qualified opinion request, the board's legal counsel shall prepare a draft opinion for board review. Upon an affirmative vote of at least four members, the board will issue a board advisory opinion. Advice contained in a board opinion, if followed, constitutes a defense to a *subsequent* complaint filed with the board that is based on the same facts and circumstances.

[Filed 12/2/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4766B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Currently, campaign committees are permitted to make campaign expenditures only by check. The amendment permits a campaign committee to also make campaign expenditures by debit card or credit card.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

The amendment was published under Notice of Intended Action on September 14, 2005, as **ARC 4500B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on December 1, 2005.

This amendment is intended to implement Iowa Code sections 68A.203 as amended by 2005 Iowa Acts, chapter 72, section 5, and 68A.402A.

This amendment will become effective on January 25, 2006.

The following amendment is adopted.

Amend rule 351—4.36(68A,68B) as follows:

351—4.36(68A,68B) Cash transactions. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check, *debit card*, or *credit card*. Cash withdrawals and “petty cash” accounts are not permitted. If a committee ~~fund-raising~~ *fundraising* activity necessitates a cash drawer for making change or other cash transactions, the committee may issue a check payable to the committee treasurer or the candidate, in the case of a candidate’s committee, or payable to the committee treasurer or the committee chairperson, in the case of a political committee. The purpose of the expenditure shall be reported on Schedule B as “cash advance for (describe activity, e.g., concession stand cash drawer).” Upon completion of the ~~fund-raising~~ *fundraising* activity, the committee shall redeposit the same amount as that which was advanced into the committee account. The redeposit shall be reported as a reverse entry on Schedule B as a “redeposit of cash advance for (describe activity).” The proceeds of the ~~fund-raising~~ *fundraising* activity (excluding the cash advance) shall be reported on Schedule A - Contributions Received.

This rule is intended to implement Iowa Code Supplement sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and 68A.402 68A.402A.

[Filed 12/2/05, effective 1/25/06]

[Published 12/21/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4763B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

Due to statutory amendments to the laws involving campaign signs, certain provisions of the Board’s current rule on the use of corporate property for campaign purposes are no longer accurate. The amendments resolve this problem by referencing the appropriate campaign laws.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on October 26, 2005, as **ARC 4588B**. No oral or written comments on the amendments were received. These amendments are identical to those published under Notice.

The Board adopted these amendments on December 1, 2005.

These amendments are intended to implement Iowa Code sections 68A.406 as amended by 2005 Iowa Acts, chapter 3, section 18, and chapter 72, sections 17 through 19, and 68A.503 as amended by chapter 3, section 19, and chapter 72, section 20.

These amendments will become effective on January 25, 2006.

The following amendments are adopted.

ITEM 1. Rescind subrules **4.44(1)** and **4.44(2)** and adopt the following **new** subrule in lieu thereof:

4.44(1) The physical placement of campaign materials on corporate property except as permitted under Iowa Code sections 68A.406 and 68A.503.

ITEM 2. Renumber subrules **4.44(3)** through **4.44(7)** as **4.44(2)** through **4.44(6)**.

[Filed 12/2/05, effective 1/25/06]

[Published 12/21/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4764B**ETHICS AND CAMPAIGN
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 8, “Executive Branch Lobbying,” Iowa Administrative Code.

Iowa Code section 68B.22(4)“r” permits state and local government personnel to attend functions held during the legislative session so long as the sponsor of the function files a report disclosing the total cost of food, beverage, and entertainment provided at the function. Previously, sponsors were required to file separate reports with the legislative branch and with the Board. Pursuant to 2005 Iowa Acts, chapter 76, section 5, a sponsor is now required to file the report with the legislative branch and the legislative branch sends a copy to the Board. The amendment rescinds the current rule concerning a sponsor’s filing of a report with the Board.

The amendment was published under Notice of Intended Action on September 14, 2005, as **ARC 4487B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on December 1, 2005.

This amendment is intended to implement Iowa Code section 68B.22(4)“r” as amended by 2005 Iowa Acts, chapter 76, section 5.

This amendment will become effective on January 25, 2006.

The following amendment is adopted.

Rescind and reserve rule **351—8.10(68B)**.

[Filed 12/2/05, effective 1/25/06]

[Published 12/21/05]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4741B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 225C.6 and 2005 Iowa Acts, chapter 167, section 66, the Department of Human Services amends Chapter 24, "Accreditation of Providers of Services to Persons with Mental Illness, Mental Retardation, and Developmental Disabilities," Iowa Administrative Code.

2005 Iowa Acts, chapters 117 and 167, directed the Department to apply for a waiver to provide Medicaid services to children in need of treatment to cure or alleviate serious mental illness or disorder or emotional damage who would qualify for the care provided by a psychiatric mental institution for children and whose parents are unable to provide such treatment. The children's mental health demonstration waiver was approved July 1, 2005. 2005 Iowa Acts, chapter 117, section 4, subsection 4, requires that children receiving services under the waiver have access to case management services.

Counties may designate the case management agency for the children's mental health population as they do for people with mental retardation, chronic mental illness, or developmental disabilities. The county may designate an existing agency that serves those populations and is currently certified by the Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission, or may designate an agency that specializes in service to children with serious emotional disturbance and that is not currently certified by the Commission.

These amendments contribute toward the implementation of the waiver by:

- Recognizing a new target population for accredited case management services through a definition of "severe emotional disturbance."
- Specifying a new performance standard for case management services to children with severe emotional disturbance by requiring a case manager-to-child ratio of no more than 1 to 15. A lower ratio is necessary because it is anticipated that the children served in this waiver will require more intensive services, including coaching and follow-up with families, coordination with local and area education agencies and juvenile court services, and frequent crisis intervention and modification of case plans.

These amendments also make technical corrections to language referencing the Commission, in conformance with changes to Iowa Code chapter 225C made by 2004 Iowa Acts, chapter 1090, sections 4 and 5.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on October 12, 2005, as **ARC 4568B**, to solicit comment on identical amendments which were simultaneously Adopted and Filed Emergency and published as **ARC 4569B**. The Department received no comments on the Notice of Intended Action. These rules are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments do not provide for waivers in specified situations. Agencies may request a waiver of these provisions under the Department's general rule on exceptions at 441—1.8(17A,217).

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on November 17, 2005.

These amendments are intended to implement Iowa Code section 225C.6; 2005 Iowa Acts, chapter 117, sections 3 and 4; and 2005 Iowa Acts, chapter 167, section 13.

These amendments shall become effective January 25, 2006, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

ITEM 1. Amend **441—Chapter 24**, preamble, first unnumbered paragraph, as follows:

The mental health, ~~and mental retardation~~, developmental disabilities, ~~and brain injury~~ commission has established this set of standards to be met by all providers of services to people with mental illness, mental retardation, or developmental disabilities that are under the authority of the commission. These standards apply to providers that are not required to be licensed by the department of inspections and appeals. These providers include community mental health centers, mental health services providers, case management providers, and supported community living providers, in accordance with Iowa Code chapter 225C.

ITEM 2. Amend rule **441—24.1(225C)** as follows:

Amend the definition of "commission" as follows:

"Commission" means the mental health, ~~and mental retardation~~, developmental disabilities, ~~and brain injury~~ commission (~~MH/DD~~ ~~MH/MR/DD/BI~~ commission) as established and defined in Iowa Code section ~~225C.3~~ 225C.5.

Adopt the following new definition of "serious emotional disturbance" in alphabetical order:

"Serious emotional disturbance" means a diagnosable mental, behavioral, or emotional disorder that (1) is of sufficient duration to meet diagnostic criteria for the disorder specified by the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition (DSM-IV-TR), published by the American Psychiatric Association; and (2) has resulted in a functional impairment that substantially interferes with or limits a consumer's role or functioning in family, school, or community activities. "Serious emotional disturbance" shall not include developmental disorders, substance-related disorders, or conditions or problems classified in DSM-IV-TR as "other conditions that may be a focus of clinical attention" (V codes), unless those conditions co-occur with another diagnosable serious emotional disturbance.

ITEM 3. Amend subrule **24.4(9)**, paragraph "**b**," subparagraph (11), as follows:

(11) Within an accredited case management program, the average caseload is no more than 45 individuals per each full-time case manager. *The average caseload of children with serious emotional disturbance is no more than 15 children per full-time case manager.*

[Filed 11/22/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4750B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code section 505.8, the Insurance Division hereby amends Chapter 38, "Coordination of Benefits," Iowa Administrative Code.

The amendment updates Chapter 38 to create a new Division II which contains the recently adopted amendments to the National Association of Insurance Commissioners (NAIC) Model Regulation on Coordination of Benefits.

The main focus of this rule making is to add specificity to the order of benefit determination rules. The new rules contain specific guidance in the case of dependent children, for persons who are retired or laid off, or on COBRA. The rules contain a dispute resolution procedure and expanded definitions of numerous terms. The rules also contain a consumer guide to coordination of benefits.

This amendment does not contain a waiver provision. The Insurance Division has previously adopted a general waiver provision in 191—Chapter 4.

Notice of Intended Action was published in the October 12, 2005, Iowa Administrative Bulletin as **ARC 4571B**. A public hearing was held on November 1, 2005.

The adopted amendment differs from the Notice. The adopted amendment conforms to the National Association of Insurance Commissioners Model Regulation on Coordination of Benefits. Specifically, coordination is now allowed against individual health plans. Amendments were made to rule 38.13(509,514) to insert references to coordination against individual plans. A definition of "policyholder" has also been added to rule 38.13(509,514). In rule 38.13(509,514), the definitions of "plan" and "policyholder" read as follows:

"Plan" means a form of coverage with which coordination is allowed. Separate parts of a plan for members of a group that are provided through alternative contracts that are intended to be part of a coordinated package of benefits are considered one plan and there is no COB among the separate parts of the plan.

"If a plan coordinates benefits, its contract shall state the types of coverage that will be considered in applying the COB provision of that contract. Whether the contract uses the term "plan" or some other term such as "program," the contractual definition may be no broader than the definition of "plan" in paragraph 1 below. A model COB provision is contained in Appendix A of this division.

"1. 'Plan' includes:

"a. Group and nongroup insurance contracts and subscriber contracts;

"b. Uninsured arrangements of group or group-type coverage;

"c. Group and nongroup coverage through closed panel plans;

"d. Group-type contracts;

"e. The medical care components of long-term care contracts, such as skilled nursing care;

"f. The medical benefits coverage in automobile "no fault" and traditional automobile "fault" contracts; and

"g. Medicare or other governmental benefits, as permitted by law, except as provided in paragraph 2" below. This part of a plan may be limited to the hospital, medical and surgical benefits of the governmental program.

"2. 'Plan' does not include:

"a. Hospital indemnity coverage benefits or other fixed indemnity coverage;

"b. Accident-only coverage;

"c. Specified disease or specified accident coverage;

"d. Limited benefit health insurance coverage, as defined in 191—subrule 36.6(10);

"e. School accident-type coverages that cover students for accidents only, including athletic injuries, either on a 24-hour basis or on a "to and from school" basis;

"f. Benefits provided in long-term care insurance policies for nonmedical services, for example, personal care, adult day care, homemaker services, assistance with activities of daily living, respite care and custodial care, or for contracts that pay a fixed daily benefit without regard to expenses incurred or the receipt of services;

"g. Medicare supplement policies;

"h. A state plan under Medicaid; or

"i. A governmental plan, which, by law, provides benefits that are in excess of those of any private insurance plan or other nongovernmental plan."

"Policyholder" means the primary insured named in a nongroup insurance policy."

Minor changes were made to Appendices A and B to clarify that coordination against individual plans will be permitted. In Appendix A, Definitions section, paragraph A(1) now reads as follows:

"(1) **Plan** includes: group and nongroup insurance contracts, health maintenance organization (HMO) contracts, closed panel plans or other forms of group or group-type coverage (whether insured or uninsured); medical care components of long-term care contracts, such as skilled nursing care; medical benefits under group or individual automobile contracts; and Medicare or any other federal governmental plan, as permitted by law."

In Appendix B, Double Coverage section, the second unnumbered paragraph now reads as follows:

"When you are covered by more than one health plan, state law permits your insurers to follow a procedure called 'coordination of benefits' to determine how much each should pay when you have a claim. The goal is to make sure that the combined payments of all plans do not add up to more than your covered health care expenses."

These rules are intended to implement Iowa Code chapters 509 and 514.

These rules shall become effective on January 25, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [38.12 to 38.19, Appendices A, B] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 4571B**, IAB 10/12/05.

[Filed 11/30/05, effective 1/25/06]

[Published 12/21/05]

[For replacement pages for IAC, see IAC Supplement 12/21/05.]

ARC 4755B**IOWA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM[495]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby amends Chapter 2, "Investment Board," Chapter 3, "Benefits Advisory Committee," Chapter 4, "Employers," Chapter 11, "Application for, Modification of, and Termination of Benefits," Chapter 12, "Calculation of Monthly Retirement Benefits," Chapter 17, "Public Records and Fair Information Practices," and Chapter 26, "Appeals and Contested Cases—Proceedings," Iowa Administrative Code.

The purpose of these amendments is to allow for participation by the IPERS Investment Board in the annual performance review of the Chief Investment Officer, which is already an informal Board practice; to remove a limitation on the qualifications of the public member of the Benefits Advisory Committee by deleting the word "substantial" from subrules that require this member to have "substantial pension expertise"; to add to the IPERS collection of overpayment process a provision for refunds paid to persons who violate the bona fide severance requirement and who cannot be located; to clarify the time period for certain lump sum payments from calendar month to 30 days; to add amendments to procurement proposals and procedures that align the IPERS rules with those of the Department of Administrative Services; and to correct scrivener's errors.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 2005, as **ARC 4601B**. A public hearing was held on November 15, 2005. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

There are no waiver provisions included in the amendments.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

These amendments will become effective January 25, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [2.1"8," 3.2(1), 3.3, 3.4, 4.6(4)"d," 11.7(3), 12.8(4)"j," 17.13(2)"b" to "i," 26.3(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 4601B**, IAB 10/26/05.

[Filed 12/1/05, effective 1/25/06]

[Published 12/21/05]

[For replacement pages for IAC, see IAC Supplement 12/21/05.]

ARC 4735B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 202, "Discipline for Physical Therapists and Physical Therapist Assistants," and Chapter 204, "Fees," Iowa Administrative Code.

The amendment in Item 2 rescinds rule 645—204.1(147, 148A) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed and noticed this rule to provide licensees and the public an opportunity to comment on the proposed rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4495B**. A public hearing was held on October 4, 2005, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One public comment was received regarding subrule 202.2(26), where a reference to lapsed license should be removed since there is no longer a lapsed license status. The Board included a correction to 202.2(26) based on the comment received.

These amendments were adopted by the Board of Physical Therapy Examiners on November 18, 2005.

These amendments will become effective January 25, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 148A and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 202.2(26) as follows:

202.2(26) Representing oneself as a licensed physical therapist or physical therapist assistant when one's license has been suspended or revoked, or when the license is ~~lapsed~~ or ~~has been placed~~ on inactive status.

ITEM 2. Rescind rule 645—204.1(147,148A) and adopt the following **new** rule in lieu thereof:

645—204.1(147,148A) License fees. All fees are nonrefundable.

204.1(1) Licensure fee for license to practice physical therapy or as a physical therapist assistant is \$120.

204.1(2) Biennial license renewal fee for a physical therapist is \$60.

204.1(3) Biennial license renewal fee for a physical therapist assistant is \$60.

204.1(4) Late fee for failure to renew before expiration is \$60.

204.1(5) Reactivation fee is \$120.

204.1(6) Duplicate or reissued license certificate or wallet card fee is \$20.

204.1(7) Verification of license fee is \$20.

204.1(8) Returned check fee is \$25.

204.1(9) Disciplinary hearing fee is a maximum of \$75.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

[Filed 11/19/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4736B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 209, "Discipline for Occupational Therapists and Occupational Therapy Assistants," and Chapter 210, "Fees," Iowa Administrative Code.

The amendment in Item 2 rescinds rule 645—210.1(147, 148B) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed and noticed this rule to provide licensees and the public an opportunity to comment on the proposed rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4489B**. A public hearing was held on October 4, 2005, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One public comment was received regarding subrule 209.2(26), where a reference to lapsed license should be removed since there is no longer a lapsed license status. The Board included a correction to 209.2(26) based on the comment received.

These amendments were adopted by the Board of Occupational Therapy Examiners on November 18, 2005.

These amendments will become effective January 25, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 209.2(26) as follows:

209.2(26) Representing oneself as a licensed occupational therapist or occupational therapy assistant when one's license has been suspended or revoked, or when the license is ~~lapsed or has been placed~~ on inactive status.

ITEM 2. Rescind rule 645—210.1(147,148B) and adopt the following **new** rule in lieu thereof:

645—210.1(147,148B) License fees. All fees are nonrefundable.

210.1(1) Licensure fee for an OT or OTA license to practice occupational therapy is \$120.

210.1(2) Biennial license renewal fee to practice occupational therapy is \$60.

210.1(3) Biennial license renewal fee for an occupational therapy assistant is \$60.

210.1(4) Late fee for failure to renew before expiration is \$60.

210.1(5) Reactivation fee is \$120.

210.1(6) Duplicate or reissued license certificate or wallet card fee is \$20.

210.1(7) Verification of license fee is \$20.

210.1(8) Returned check fee is \$25.

210.1(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

[Filed 11/19/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4737B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby amends Chapter 261, "Licensure of Respiratory Care Practitioners," Iowa Administrative Code.

The amendment to rule 645—261.5(152B) removes language relating to a graduate to conform the rule to legislative changes in 2005 Iowa Acts, House File 789, section 15.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4499B**. A public hearing was held on October 4, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. This amendment is identical to that published under Notice.

The amendment was adopted by the Board of Respiratory Care Examiners on November 10, 2005.

This amendment will become effective January 25, 2006.

This amendment is intended to implement Iowa Code chapters 21, 147, 152B and 272C.

The following amendment is adopted.

Amend rule 645—261.5(152B) as follows:

645—261.5(152B) Students/graduates.

261.5(1) A student enrolled in an approved respiratory care training program who is employed in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for the duration of the respiratory care practitioner program, not to exceed the duration of the respiratory care program or more than two years after the four-year program.

261.5(2) A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for one year from the date of the successful completion of the program. The graduate shall be identified as a "respiratory care practitioner license applicant."

261.5(3 2) Direct and immediate supervision of a respiratory care student or graduate practitioner means that the licensed respiratory care practitioner shall:

a. Be continuously on site and present in the department or facility where the student or graduate is performing care;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- b. Be immediately available to assist the person being supervised in the care being performed; and
- c. Be responsible for care provided by students ~~and graduates.~~

[Filed 11/19/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4738B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby amends Chapter 263, "Discipline for Respiratory Care Practitioners," and Chapter 264, "Fees," Iowa Administrative Code.

The amendment in Item 2 rescinds rule 645—264.1(147, 152B) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed and noticed this rule to provide licensees and the public an opportunity to comment on the proposed rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4498B**. A public hearing was held on October 4, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One public comment was received regarding subrule 263.2(25), where a reference to lapsed license should be removed since there is no longer a lapsed license status. The Board included a correction to 263.2(25) based on the comment received.

These amendments were adopted by the Board of Respiratory Care Examiners on November 10, 2005.

These amendments will become effective January 25, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 263.2(25) as follows:

263.2(25) Representing oneself as a respiratory care practitioner when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 2. Rescind rule 645—264.1(147,152B) and adopt the following **new** rule in lieu thereof:

645—264.1(147,152B) License fees. All fees are nonrefundable.

264.1(1) Initial or endorsement licensure fee to practice respiratory care is \$120.

264.1(2) Biennial license renewal fee for each biennium is \$60.

264.1(3) Late fee for failure to renew before expiration is \$60.

264.1(4) Reactivation fee is \$120.

264.1(5) Duplicate or reissued license certificate or wallet card fee is \$20.

264.1(6) Verification of license fee is \$20.

264.1(7) Returned check fee is \$25.

264.1(8) Disciplinary hearing fee is a maximum of \$75. This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152B and 272C.

[Filed 11/19/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4756B**PROFESSIONAL LICENSURE
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Interpreter for the Hearing Impaired Examiners amends Chapter 361, "Licensure of Interpreter for the Hearing Impaired Practitioners," and Chapter 364, "Fees," Iowa Administrative Code.

The amendment in Item 2 rescinds rule 645—364.1(147,80GA,ch1175) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4494B**. A public hearing was held on October 4, 2005, from 10 to 10:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. The Board added Item 1, which amends subrule 361.5(2) for consistency with other Boards' rules. The amendment allows a licensee who renews within six months of a new licensing cycle to wait until the subsequent renewal period to renew the license.

The amendments were adopted by the Board of Interpreter for the Hearing Impaired Examiners on November 21, 2005.

These amendments will become effective January 25, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

The following amendments are adopted.

ITEM 1. Amend subrule 361.5(2) as follows:

361.5(2) An individual who was issued ~~an initial~~ a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

ITEM 2. Rescind rule 645—364.1(147,80GA,ch1175) and adopt the following **new** rule in lieu thereof:

645—364.1(147,80GA,ch1175) License fees. All fees are nonrefundable.

364.1(1) Licensure fee for license to practice interpreting for the hearing impaired is \$120.

364.1(2) Licensure fee for temporary license to practice interpreting for the hearing impaired is \$120.

364.1(3) Biennial license renewal fee for each biennium is \$120.

364.1(4) Late fee for failure to renew before expiration is \$60.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

364.1(5) Duplicate or reissued license certificate or wallet card fee is \$20.

364.1(6) Verification of license fee is \$20.

364.1(7) Returned check fee is \$25.

364.1(8) Disciplinary hearing fee is a maximum of \$75.

364.1(9) Reactivation fee is \$180.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

[Filed 11/29/05, effective 1/25/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4772B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 16, "State of Iowa Building Code," and adopts new Chapter 300, "State Building Code—Administration," Chapter 301, "State Building Code—General Provisions," Chapter 302, "State Building Code—Accessibility of Buildings and Facilities Available to the Public," and Chapter 303, "State Building Code—Requirements for Energy Conservation in Construction," Iowa Administrative Code.

Iowa Code chapter 103A provides for the adoption of a State Building Code. Generally, the State Building Code applies to construction of state-owned buildings and facilities and buildings and facilities in local jurisdictions which have adopted the State Building Code by local ordinance in accordance with procedures established in Iowa Code section 103A.12. In addition, certain provisions of the State Building Code apply statewide, including specifically requirements for accessibility of buildings and facilities to persons with disabilities, when the buildings or facilities are available to the public; requirements for minimum plumbing facilities in places of public assembly, restaurants, pubs, and lounges; energy efficiency requirements; and requirements for factory-built structures, which include manufactured homes and modular buildings.

The State Building Code has become outdated. Revisions to the State Building Code in recent years have been made on a piecemeal basis, without any comprehensive review of the entire Code having been undertaken. The Building Code Commissioner, working in consultation with the Building Code Advisory Council and with various groups of stakeholders, has undertaken such a comprehensive review in recent months. These rules are the result of that review.

These rules were proposed in a Notice of Intended Action, published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4514B**. Public hearings to accept comment on the proposed rules were held on October 13 and October 18, 2005. The hearings on October 13 were accessible throughout the state via the Iowa Communications Network.

Numerous comments regarding the proposed rules were received at the public hearings, by mail and electronic mail. Major points made in these comments and the responses to them are included in the following summary of the adopted

rules, including changes which vary from the text of the proposed rules.

All of the rules of the Department of Public Safety are in the process of being renumbered to make them easier to locate. The State Building Code is currently Chapter 16 of the Department's rules. Most of Chapter 16 is being rescinded and replaced by a series of chapters starting with Chapter 300. All chapters in the 300 series will be promulgated under the rule-making authority assigned to the Building Code Commissioner by Iowa Code chapters 103A, 104A, and 104B. Eventually, Chapter 16 will be rescinded entirely. For now, however, the portion of Chapter 16 which deals with requirements for factory-built structures is being retained, as these rules are likely to undergo major revisions within the next few months.

Chapter 300 contains basic administrative information and requirements related to the State Building Code, including fees and procedures for submitting construction plans for review. The adopted text of Chapter 300 differs from the text proposed in the Notice of Intended Action as follows:

(1) A minor correction is made in the name of the body which approves adoption by the Building Code Commissioner of the State Historic Building Code. The introductory paragraph of rule 300.1(103A) now reads as follows:

"661—300.1(103A) State building code promulgated. Iowa Code section 103A.7 gives to the building code commissioner, with the approval of the building code advisory council, authority to promulgate the state building code, except that adoption of the state historic building code requires the approval of the state historical society board of trustees, rather than the building code advisory council."

(2) An exception is added which allows buildings and facilities which are subject to the State Building Code to comply with the Code as it currently exists, rather than with the new Code, provided that required architectural submissions are made to the Building Code Commissioner no later than September 30, 2006, or six months after the effective date of these new rules. The new exception in rule 300.1(103A) now reads as follows:

"EXCEPTION: Prior to October 1, 2006, buildings or facilities subject to the state building code may be designed and constructed in compliance with 661—Chapter 16 as it existed on December 1, 2005. 'Prior to October 1, 2006' means that required submissions have been made to the building code commissioner or a local building department by the close of business on September 30, 2006."

(3) Requirements for submission of construction documents for state-owned buildings are separated from the parallel requirements for other buildings subject to the State Building Code. Subrule 300.4(1) now reads as follows:

"300.4(1) Plans and specifications review.

"a. Architectural technical submissions, engineering documents, or plans and specifications for all state-owned buildings or facilities shall be submitted to and approved by the commissioner before construction is begun. Such submittals shall be filed by the owner or an authorized agent, agency or the responsible design architect or engineer. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

"b. Architectural technical submissions, engineering documents, or plans and specifications for all buildings or facilities to which the state building code applies, other than state-owned buildings or facilities, shall be submitted to and ap-

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proved by the commissioner before construction is begun, unless applicability of the state building code is based upon a local ordinance enacted pursuant to Iowa Code section 103A.12. Such submittals shall be filed by the owner or an authorized agent or agency or the responsible design architect or engineer. Submittals shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2. If applicability of the state building code is based upon a local ordinance adopting the state building code, the submission shall be made to the local jurisdiction, provided that the local jurisdiction has established a building department, unless the local jurisdiction requires submission to the building code commissioner. Review and approval of such documents by the building code commissioner shall be at the discretion of the building code commissioner based upon resources available.

“NOTE: Preliminary or intermediate documents may be submitted for general discussion concerning compliance with the appropriate regulations if the documents are labeled ‘preliminary’ or ‘not for construction’ or are labeled with similar wording indicating that the documents are not being submitted for final approval. Such preliminary documents shall not exhibit the seal and signature.”

The Code of Iowa provides that, in general, requirements established in the State Building Code apply to construction of state-owned buildings and to construction in local jurisdictions which adopt the State Building Code by local ordinance. It should be noted that there are some other occupancies to which the State Building Code applies if there is no locally adopted building code, including to elder group homes and to apartment buildings being converted to condominiums. The Iowa Racing and Gaming Commission has adopted a rule which requires that construction of a gaming facility comply with the State Building Code if there is not a local building code in force. General requirements for construction which apply to these cases are located in new Chapter 301. Chapter 301 includes definitions which apply to all chapters which collectively will constitute the State Building Code, as well as to electrical, mechanical, and plumbing requirements and to requirements for residential construction. In addition, Chapter 301 addresses one area in which the requirements established apply statewide, namely, requirements for minimum plumbing facilities provided in places of public assembly, restaurants, pubs, and lounges.

Several comments were received supporting the adoption of the National Fire Protection Association building code (NFPA 5000, “Building Construction and Safety Code”) rather than the International Building Code, the adoption of which was included in the rules proposed in the Notice of Intended Action. One reason offered for supporting the NFPA code is greater consistency with rules of the State Fire Marshal, which are largely based on NFPA standards. While it is true that rules of the Fire Marshal are generally based upon NFPA standards, the Building Code Commissioner finds, and the Building Code Advisory Council has concurred, that potential inconsistencies between a State Building Code based upon the International Building Code and related codes and rules of the Fire Marshal based upon NFPA standards can be resolved fairly readily and that, in any event, consistency between the State Building Code and the local building codes of various Iowa local jurisdictions, many of which are based on the International Building Code, and between the Iowa State Building Code and building codes of

more than 40 other states, which are based upon the International Building Code, is of overriding importance. Therefore, the adopted rules continue to be based upon the International Building Code and related codes.

In response to information received from the Iowa Department of Natural Resources, a reference in the International Building Code to the International Private Sewage Disposal Code is deleted and replaced with a reference to administrative rules of the Department of Natural Resources regulating private sewage disposal systems. In rule 301.3(103A), the following was added to the list of amendments to the International Building Code, 2003 edition, which is adopted by reference therein:

“Amend section 3401.3 by deleting ‘International Private Sewage Disposal Code’ and inserting in lieu thereof ‘567 Iowa Administrative Code Chapter 69.’”

Similar language was also added to the rule regarding plumbing requirements. The following new paragraph was added following the introductory paragraph of rule 301.6(103A):

“Private sewage disposal systems shall comply with 567—Chapter 69.”

In addition, the following new paragraphs were added to rule 301.8(103A), in the list of amendments to the International Residential Code, 2003 edition, adopted by reference therein:

“Delete chapters 1 and 11.

“Amend section R323.1.6 by striking the words ‘Chapter 3 of the International Private Sewage Disposal Code’ and inserting in lieu thereof ‘567 Iowa Administrative Code Chapter 69.’”

Numerous comments were received regarding the adoption of plumbing and mechanical requirements in Chapter 301. The bulk of these comments supported the adoption of the Uniform Plumbing Code and the Uniform Mechanical Code, both of which are published by the International Association of Plumbing and Mechanical Officials (IAPMO), rather than of the International Plumbing Code and the International Mechanical Code, although some comments were received supporting the adoption of the International Plumbing Code and the International Mechanical Code. The Building Code Commissioner and the Building Code Advisory Council have elected to retain the language regarding plumbing and mechanical requirements as it appeared in the proposed rules, as the language on plumbing requirements recognizes appropriately the authority of the Iowa Department of Public Health over the State Plumbing Code and arguments for the Uniform Mechanical Code over the International Mechanical Code do not appear compelling. One change is incorporated in rule 301.4(103A), which establishes mechanical requirements. This change allows compliance with the 2004 edition (latest edition) of the standard issued by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) regarding ventilation for indoor air quality. In rule 301.4(103A), the following was added to the list of amendments to the International Mechanical Code, 2003 edition, which is adopted by reference therein:

“Delete section 403 and insert in lieu thereof the following new section:

“SECTION 403

“MECHANICAL VENTILATION

“Mechanical ventilation systems shall be designed in accordance with the provisions of ASHRAE Standard 62.1-2004, ‘Ventilation for Acceptable Indoor Air Quality,’ published by the American Society of Heating, Refrigerating

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and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329.”

Some comments were also received regarding electrical requirements, and these requirements are being retained in the same form as they appeared in the proposed rules.

Chapters 302 and 303 address other requirements of the State Building Code which apply statewide. These include requirements for accessibility to persons with disabilities of buildings and facilities available to the public and energy conservation requirements. Although requirements for factory-built structures also apply statewide, as mentioned earlier, standards for factory-built structures currently in Chapter 16 will not be affected by this rule making.

Chapter 302 contains requirements for accessibility to persons with disabilities to buildings and facilities available to the public. The standards currently in Division VII of Chapter 16 are being moved to this chapter, with some minor changes. The requirements were significantly revised two years ago and are based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). The U.S. Department of Justice is currently in the early stages of a rule-making process to adopt revisions to ADAAG. The provisions in Chapter 302 are expected to be revised when the federal rule making is complete so that Iowa and federal accessibility requirements remain compatible. The current Division VII of Chapter 16 also includes requirements for accessibility of multiple dwelling unit buildings which have been moved to Chapter 302. Comments were received from the Iowa Finance Authority requesting that the adopted rules contain clarification that additional accessibility requirements may apply to buildings and facilities being constructed with federal financing, and language to provide such clarification has been added in Chapter 302. The introductory paragraph and “Exception” in subrule 302.20(1) have changed. Exception 2 and a Note have been added. The paragraphs now read as follows:

“302.20(1) Multiple dwelling unit buildings. This rule shall apply to all multiple dwelling unit buildings that consist of four or more dwelling units, if such buildings have one or more elevators. In such buildings without an elevator, all ground floor units must be accessible. The requirements of this rule shall apply to the individual dwelling units and the common use spaces which are accessible to persons with disabilities in multiple dwelling unit buildings.

“EXCEPTION 1: A multiple dwelling unit building shall be deemed to be in compliance with this rule if it is located in a local jurisdiction which has enacted accessibility rules which have been recognized by the U.S. Department of Housing and Urban Development as providing a safe harbor for compliance with the accessibility requirements established in the federal Fair Housing Act and if the building has been found to be in compliance with those requirements, unless the building is required to comply with the requirements of the Uniform Federal Accessibility Standards, or other applicable standards which may be more restrictive than the provisions of this rule.

“EXCEPTION 2: Certain multiple dwelling unit buildings are required to comply with the Uniform Federal Accessibility Standards, published by the U.S. Access Board, 1988. Compliance with the provisions of this rule does not substitute for compliance with any applicable provision of the Uniform Federal Accessibility Standards, or any other applicable standards which may be more restrictive than the provisions of this rule.

“NOTE: Compliance with the Uniform Federal Accessibility Standards is generally required for buildings and facilities constructed with federal financial assistance.”

Proposed “Note 1” in subparagraph 302.20(1)“a”(1) was not adopted.

The “Note” following subrule 302.20(2) was changed and now reads as follows:

“NOTE: Elevators are not required in apartment buildings of three or fewer stories; however, the Uniform Federal Accessibility Standards, or any other applicable standard, may require the installation of an elevator. If an elevator is not required to be installed by this rule, then the elevator is not subject to the requirements of rule 661—302.5(103A,104A).”

Subrule 302.20(3) now reads as follows:

“302.20(3) Any covered units within a multiple unit dwelling which comply with a code or standard which has been certified as a safe harbor for compliance with the accessibility requirements of the federal Fair Housing Act by the U.S. Department of Housing and Urban Development shall be deemed to be in compliance with rule 661—302.20(103A,104A), unless the covered units are required to comply with the Uniform Federal Accessibility Standards or any other applicable requirements which may be more restrictive than the provisions of this rule.”

Also, in response to a request from a representative of interior designers, language was added to the rule regarding submission of plans for accessibility reviews recognizing the possibility that design professionals other than registered architects may be authorized to submit required documents, depending upon the nature of the features to be reviewed. Rule 302.3(103A,104A) now reads as follows:

“661—302.3(103A,104A) Plan review procedures. Prior to the commencement of construction of a facility which is required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A), the owner of the property, or a contractor, architect, or other design professional authorized to do so by law, acting on behalf of the owner of the property, shall submit an application for approval of the construction plans. The application shall be on a form required by the building code commissioner and shall be submitted to the local building authority, if there is one. If there is no local building authority, the application shall be submitted to the building code bureau. The application shall be accompanied by a copy of the construction plans and payment of the applicable fee.”

Chapter 303 establishes updated requirements for energy conservation measures in construction undertaken in Iowa. The chapter establishes requirements for residential construction and for nonresidential construction. The proposed rules would have adopted the provisions of the International Energy Conservation Code (IECC), 2004 supplement, as the requirements for both residential and nonresidential construction in Iowa. Numerous comments were received regarding the text of proposed Chapter 303, and several changes from the proposed rules have been included in the rules adopted herein.

In subrule 303.1(2), the first unnumbered paragraph proposed in the Notice was not adopted. Subrule 303.1(3) was added and reads as follows:

“303.1(3) Review by architect or engineer.

“a. The plans and specifications for all buildings to be constructed after January 1, 1978, and which exceed a total volume of 100,000 cubic feet of enclosed space that is heated or cooled shall be reviewed by a registered architect or licensed professional engineer for compliance with applicable energy efficiency standards.

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"b. Statement of review. A statement that a review has been accomplished and that the design is in compliance with the energy efficiency standards shall be signed and sealed by the responsible registered architect or licensed professional engineer. This statement shall be filed with the commissioner on the form furnished by the commissioner, prior to construction or the obtaining of any local permits.

"c. Submission fee. Included with the statement shall be a remittance of \$15, made payable to the Treasurer, State of Iowa.

"d. Additional buildings. If the plans and specifications relating to energy efficiency for a specific structure have been approved, additional buildings may be constructed from those same plans and specifications without need of further approval if construction begins within five years of the date of approval. Alterations of a structure which has been previously approved shall not require a review because of these changes, provided the basic structure remains unchanged and no additional energy is required for heating, cooling or lighting.

"e. Changes to approved plans. No changes shall be made to any approved plan or specifications which either decrease or increase the amount of energy used for heating, cooling, or lighting, unless approved by the responsible registered architect or licensed professional engineer in writing and notice filed with the commissioner.

"f. Local plan review. The review of plans and specifications for buildings constructed with a volume of less than 100,000 cubic feet of enclosed space which is heated or cooled shall be in accordance with local or other building code requirements pertaining to plan review, as required by Iowa Code section 103A.19."

The most significant change from the proposed text of Chapter 303 occurs in rule 661—303.2(103A), containing requirements for energy conservation in residential construction. The adopted text is nearly identical to the text of current rule 661—16.801(103A), rather than to the text of proposed rule 661—303.2(103A) included in the Notice of Intended Action. Since the Notice was published, it has been determined that Iowa Code section 103A.8A severely limits the discretion of the Building Code Commissioner in adopting requirements for energy conservation in residential construction, and that continuing to use the prior provisions would be appropriate in light of the constraints on the discretion of the Building Code Commissioner in this area. Rule 661—303.2(103A) now reads as follows:

"661—303.2(103A) Adoption of residential energy code. The Model Energy Code, 1992 edition, chapters 1 through 7 and including all charts, figures, and appendices, as published by the Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041, is adopted by reference as the residential energy code of the state of Iowa building code, applicable to low-rise residential construction throughout the state of Iowa on or after November 16, 1994, with the following amendments:

"303.2(1) Add a new subsection 101.3.1.3 as follows:

"101.3.1.3 Other exemptions—Exemptions of other buildings or classes of buildings shall be requested from the commissioner in writing. Exemptions shall be granted if the commissioner determines the requirements are unreasonable as they apply to a particular building or class of buildings based upon the data supplied with the written request or additional data if requested by the commissioner.

"303.2(2) Add a new subsection 101.3.2.4 as follows:

"101.3.2.4 Occupancy—Occupancy of any building covered by this chapter shall be determined based upon the occu-

pancy definitions in chapter 3 of the International Building Code, 2003 edition.

"303.2(3) Add a new subsection 102.3 as follows:

"102.3 Code compliance. All materials and equipment used to comply with the requirements of this code shall meet the minimum requirements of the Iowa state building code or other applicable building codes.

"303.2(4) Add to section 103 the following:

"Procedures for obtaining approval of alternate materials and methods of construction are specified in rule 661—302.2(103A).

"303.2(5) Delete section 104.1 and replace it with the following:

"104.1 General requirements. Nothing in these rules shall be interpreted to exempt or change the requirements of Iowa Code chapters 542B and 544A pertaining to licensed professional engineers and registered architects.

"303.2(6) Add an additional subsection to section 104 as follows:

"104.3 Retention of plans and specifications. Plans and specifications shall not be filed with the commissioner; however, the person signing the approval statement or the owner shall maintain a copy of the approved plans and specifications for a period of five years following substantial completion of the construction.

"303.2(7) Delete subsections under section 105 and insert in lieu thereof the following:

"105.1 Inspections. Inspection and review of construction shall be performed in the same manner as the other construction, in accordance with Iowa Code section 103A.19.

"303.2(8) Delete the exception to section 402.5 and replace it with the following:

"EXCEPTION: Except for a comparison of energy consumption between the alternative design and the standard design, single and multifamily dwellings are exempt.

"303.2(9) Add the following subsections and figures to section 502.2.

"502.2.1.6 HOME HEATING INDEX. In addition to the requirements of this code for detached one- and two-family dwellings, the calculated Home Heating Index (HHI) of Type A-1 residential buildings shall be no greater than Five Btu per Fahrenheit Degree—Day per square foot.

"502.2.1.6.1 The Home Heating Index shall be calculated using the following formula:

$$\text{"HHI"} = \frac{\text{BLC} \times 24 \times C}{A_t}$$

"BLC = Building Loss Coefficient expressed as Btu/hr. °F.

"A_t = Total square foot area of heated space (including heated basements and basements which contain the heating equipment).

"C = Correction factor from Figure 1 (to correct for solar gain and to adjust the maximum heat loss to an average hourly heat loss).

"NOTE: The Building Loss Coefficient (BLC) shall include the above-grade walls, below-grade walls, roof/ceiling, floor over unheated space, slabs on grade and infiltration based on ½ air change per hour. These values are obtained by using the standard ASHRAE methods; infiltration heat loss (H_{inf}) shall be computed as follows unless the procedure used includes infiltration in determining the component heat loss.

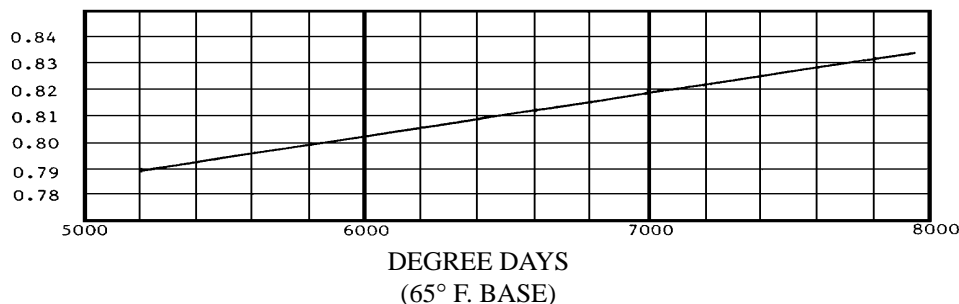
"H_{inf}(Btu/hr.°F) = (VOLUME OF HEATED SPACE IN CUBIC FEET) × 0.009

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"Other methods of calculation may be used to verify the HHI such as the Thermal Performance Calculation Method (including solar) as developed by the Iowa State University

Energy Extension Service, Manual J, as published by the Air Conditioning Contractors of America, or any other recognized method.

FIGURE 1
CORRECTION FACTOR C



"303.2(10) Add the following subsection to section 503.4:

"503.4.3.1 Vent dampers. Automatic vent dampers may be added to gas-fired equipment not otherwise equipped under the following conditions:

"1. The unit and installation procedure must be approved by the American Gas Association.

"2. The installation must be made in accordance with the approved installation procedures.

"3. The installation does not affect the operation or the warranty provisions of the equipment to which it is attached.

"303.2(11) Add new subsections to section 503.4 as follows:

"503.4.8 Oversizing of equipment. System design heating/cooling capacity. The rated capacity of the heating/cooling system at design conditions shall not be greater than 130 percent for heating, 115 percent for cooling at design output load calculated in accordance with section 503.2 whenever appropriate equipment is available. Equipment designed for standby purposes is not included in this capacity limitation requirement. The cooling capacity of heat pumps is exempt from this limitation.

"503.4.9 Combustion air. Combustion air shall be supplied as required by the Uniform Mechanical Code, 1994 edition, chapter 6. The Uniform Mechanical Code was published by the Council of American Building Officials, 5203 Leesburg Pike, Falls Church, Virginia 22041.

"303.2(12) Add at the end of the first paragraph of section 503.10:

"Provisions of the duct requirements of the Uniform Mechanical Code, 1994 edition, shall be used if different from these standards.

"303.2(13) Delete section 601.1 and replace it with the following:

"601.1 General. The requirements contained in this chapter are applicable only to buildings containing less than 100,000 cubic feet of enclosed heated or cooled space and three stories or less in height. The provisions of this chapter are limited to residential buildings, which have more than two dwelling units, that are heated only or heated and mechanically cooled and to other buildings that are heated only. Buildings constructed in accordance with this chapter are deemed to comply with this code.

"One- and two-family dwellings must comply with the Home Heating Index requirements of subrule 303.2(9).

"303.2(14) Add to RS-8 in section 701.1:

"IES pamphlets EMS-1, EMS-2, and EMS-3 are included as part of this standard."

Also in Chapter 303, the rule adopting energy conservation requirements for nonresidential construction was modified from the text in the proposed rules to change to the 2004 edition of ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except for Low-Rise Residential Buildings rather than the 2001 edition of the standard, which is referenced in the International Energy Conservation Code, 2004 Supplement. Rule 661—303.3(103A) now reads as follows: **"661—303.3(103A) Adoption of nonresidential energy code.** The International Energy Conservation Code, 2004 supplement, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to nonresidential or high-rise residential construction within the state of Iowa on or after April 1, 2006, with the following amendments:

"Delete Chapter 1.

"Amend the referenced standards under ASHRAE as follows:

"Delete '90.1-2001' and insert in lieu thereof '90.1-2004.'"

These amendments are intended to implement Iowa Code chapter 103A.

These amendments will become effective on April 1, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [Ch 16 title; rescind 16.1 to 16.600 and 16.700 to 16.802; adopt Chs 300 to 303] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4514B**, IAB 9/14/05.

[Filed 12/2/05, effective 4/1/06]

[Published 12/21/05]

[For replacement pages for IAC, see IAC Supplement 12/21/05.]

ARC 4773B**PUBLIC SAFETY
DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.41, the Building Code Commissioner, with the approval of the State Historical Society Board of Trustees, hereby adopts new Chapter 350, "State Historic Building Code," Iowa Administrative Code.

Iowa Code section 103A.41 authorizes and requires the Building Code Commissioner, with the approval of the State Historical Society Board of Trustees, to adopt the State Historic Building Code. The State Historic Building Code provides an "alternative" building code for qualified historic buildings which meet the requirements for inclusion in the National Register of Historic Places. The chapter adopted herein is the State Historic Building Code authorized by Iowa Code section 103A.41.

The adoption of the State Historic Building Code was proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 14, 2005, as **ARC 4515B**. Public hearings on this proposed adoption were held on October 13, 2005, and were accessible from various sites around the state over the Iowa Communications Network. Comments regarding the proposed rules were received from the Iowa Finance Authority. The comments included several recommendations for amending the proposed adoption of the International Existing Building Code, 2003 edition, as the State Historic Building Code. Each of the comments addressed fire safety features required in construction subject to the State Historic Building Code, particularly in multiple-unit dwellings. The Building Code Commissioner, after consultation with the State Fire Marshal, has concluded that the fire safety provisions included in the International Existing Building Code, which is being adopted by reference in these rules, are adequate and appropriate for the buildings and structures which will be subject to this Code. Consequently, the changes proposed to supplement fire safety provisions in the International Existing Building Code are not being adopted and this language will remain as it was in the Notice of Intended Action.

There are several minor editorial differences between the text adopted herein and that proposed in the Notice of Intended Action. A section of the International Existing Building Code referencing the International Fuel Gas Code is deleted because the State Fire Marshal has regulatory jurisdiction over flammable and combustible liquids. Three notes have been added. The first note alerts designers and code officials to Resource A of the International Existing Building Code, which is not adopted herein, but which may be useful in evaluating fire ratings of certain materials and assemblies. The other notes alert users of the State Historic Building Code to requirements of the Iowa Labor Services Division to comply with requirements applicable to elevators, boilers, and pressure vessels and to requirements of the Iowa Department of Natural Resources applicable to certain boilers.

This amendment is intended to implement Iowa Code sections 103A.41 through 103A.45.

This amendment will become effective on April 1, 2006. The following **new** chapter is adopted.

**CHAPTER 350
STATE HISTORIC BUILDING CODE****661—350.1(103A) Scope and definition.**

350.1(1) Scope. This chapter applies to buildings which meet the requirements for placement on the National Register of Historic Places. This chapter is an alternative to the state building code or local building codes for the buildings to which it applies.

"Historic building" means any building or structure that is listed in the state or National Register of Historic Places; that is designated as a historic property under local or state designation law or survey; that is certified as a contributing resource within a National Register-listed or locally designated historic district; or that has an opinion or certification that the property is eligible to be listed on the state or National Register of Historic Places either individually or as a contributing building to a historic district by the state historic preservation officer pursuant to Iowa Code section 103A.42 or the Keeper of the National Register of Historic Places.

350.1(2) Administration. The provisions of rules 661—300.2(103A), 300.4(103A), and 300.5(103A) are adopted by reference.

350.1(3) Adoption. The provisions of the International Existing Building Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted as the alternative requirements for rehabilitation, preservation, restoration, and relocation of historic buildings, with the following amendments:

Delete chapter 1.

Delete the definition of "historic building."

Delete section 503.3.1.

Delete appendix A, chapters A1 through A5, and appendix B.

Delete resource A.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, 2005 edition."

NOTE 1: International Existing Building Code, 2003 edition, Resource A, provides guidelines for evaluating fire ratings of archaic materials and assemblies which may be used by designers and code officials when evaluating compliance with provisions of this chapter.

NOTE 2: Except for elevators excluded from jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89A.2, each elevator is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

NOTE 3: Except for boilers and pressure vessels excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89.4, each boiler or pressure vessel is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

Any boiler which is subject to requirements established by the Iowa department of natural resources is required to comply with any such requirements and is subject to enforcement of any applicable regulations by the Iowa department of natural resources.

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This rule is intended to implement Iowa Code sections 103A.41 through 103A.45.

[Filed 12/2/05, effective 4/1/06]

[Published 12/21/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/21/05.

ARC 4742B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 52.5 and 47.1, the Secretary of State hereby adopts amendments to Chapter 22, "Voting Systems," Iowa Administrative Code.

The amendments provide programming and vote counting procedures for Diebold Election Systems' voting system which includes the Global Election Management System (GEMS), AccuVote-OS Optical Scan precinct and central count ballot scanner and the AccuVote TSX DRE touch screen direct recording electronic voting machine. The AccuVote TSX DRE includes an optional, external paper report printer to display voters' choices before the voter records the ballot.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 12, 2005, as **ARC 4564B**. No public hearing was requested or held. Several county commissioners of elections submitted comments on the amendments. Based upon questions from a county auditor about font sizes on ballots, one change has been made to subrule 22.262(4). Paragraph "b" was not adopted, and the text of paragraph "a" has been incorporated into the preceding text of the subrule. Subrule 22.262(4) now reads as follows:

"**22.262(4)** Ballot printing. Although the Diebold Election Systems' GEMS voting system software includes choices for variations in ballot layout, all ballots shall be prepared according to the requirements of Iowa Code sections 43.26 through 43.29 and 49.30 through 49.48. For all elections the voting target shall be an oval printed on the left side of each choice on the ballot."

In addition, two sentences have been added to the introductory paragraph of subrule 22.464(4). The introductory paragraph now reads as follows:

"**22.464(4)** AccuView Printer Module (AVPM). The commissioner may use this optional feature. Iowa law neither prohibits nor permits its use. The commissioner shall not provide to a recount board any information stored in the AVPM printer module canister."

These amendments are intended to implement Iowa Code chapter 52.

These amendments will become effective January 25, 2006.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [22.1, 22.262, 22.351, 22.434, 22.464] is being omitted. With the exception of the changes noted

above, these amendments are identical to those published under Notice as **ARC 4564B**, IAB 10/12/05.

[Filed 11/24/05, effective 1/25/06]

[Published 12/21/05]

[For replacement pages for IAC, see IAC Supplement 12/21/05.]

ARC 4761B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 476.2 and 2005 Iowa Acts, chapter 9, the Utilities Board (Board) gives notice that on November 29, 2005, the Board issued an order in Docket No. RMU-05-6, In re: Revised Rules for Telecommunications Providers [199 IAC 22], "Order Adopting Rules," by which the Board adopted amendments to 199 IAC 22. The adopted rules implement changes that were made to Iowa Code section 476.1D, subsections 1, 2, and 3, pursuant to 2005 Iowa Acts, chapter 9, which became effective on July 1, 2005, and to update and clarify the Board's rules relating to the provision of telecommunications service.

Notice of Intended Action was published in IAB Vol. XXVII, No. 23 (5/11/05) p. 1472, as **ARC 4157B**. Written comments were filed on or before June 6, 2005. A public hearing to receive oral comments on the proposed amendments was held on June 24, 2005.

Written comments were filed by the following seven parties: Iowa Telecommunications Association (ITA), Qwest Corporation (Qwest), LTDS Corporation (LTDS), Iowa Association of Municipal Utilities (IAMU), MCI Communications, Inc. (MCI), Frontier Communications of Iowa (Frontier), and the Consumer Advocate Division of the Department of Justice (Consumer Advocate). A summary of the comments filed and the amendments adopted can be found in the Board's order located on the Board's Web site, www.state.ia.us/iub, or in hard copy in the Board's Records Center, 350 Maple Street, Des Moines, Iowa 50319-0069. Based on the submitted comments, the Board determined that the proposed amendments to 199 IAC 22 should be adopted with some modifications.

These amendments are intended to implement Iowa Code section 476.1D, subsections 1, 2, and 3, as amended by 2005 Iowa Acts, chapter 9.

These amendments will become effective January 25, 2006.

The following amendments are adopted.

ITEM 1. Amend subrule 22.1(1) as follows:

22.1(1) Application and purpose of rules. The rules shall apply to any telephone utility operating within the state of Iowa subject to Iowa Code chapter 476, and shall supersede all conflicting rules of any telephone utility which were in force and effect prior to the adoption of their superseding rules. Unless otherwise indicated, "telephone utility" or "utility" shall mean both local exchange utility and ~~interexchange utility~~ *alternative operator services company*. These rules shall be construed in a manner consistent with their intent:

a. To allow fair competition in the public interest while ~~assuring~~ *ensuring* the availability of safe and adequate communications service to the public.

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b. To provide uniform, reasonable standards for communications service provided by telephone utilities.

c. To ~~assure~~ *ensure* that the *regulated rates of local exchange utilities and the charges of rate-regulated telephone utilities alternative operator services companies* for communications service, and regulated services rendered in connection therewith, will be reasonable and just.

d. To ~~assure~~ *ensure* that no telephone utility shall unreasonably discriminate among different customers or service categories ~~or on the basis of source or ownership of terminal equipment or existing or new inside station wiring.~~

ITEM 2. Amend subrule **22.1(3)** as follows:

Amend the following definitions:

“Demarcation point” means the point of connection provided and maintained by the telephone utility to which ~~existing or new~~ inside station wiring becomes dedicated to an individual building or facility. For an individual dwelling, this point of connection will generally be immediately adjacent to, or within 12 inches of, the protector or the dwelling side of the protector. The drop and block, including the protector, will continue to be provided by and remain the property of the telephone utility. In the instance where a physical protector does not exist at the point of cable entrance into the building or facility, the demarcation point is defined as the entrance point of the cable into the building or facility.

“Local exchange service” means telephone service furnished between customers or users located within an exchange area.

“Local exchange utility” means a telephone utility that provides local exchange service under tariff filed with the board. The utility may also provide other services and facilities such as access service.

“Rates” shall mean ~~recurring~~ amounts billed to customers for ~~regulated services local exchange service and equipment alternative operator services.~~

“Tariff” means the entire body of regulated rates, *alternative operator services rates, tolls, rentals, charges, classifications, rules, procedures, policies, etc.*, adopted and filed with the board by a telephone utility in fulfilling its role of furnishing communications services.

“Toll rate” means the ~~tariff~~ charge prescribed for toll messages, usually based upon the duration of the message, the distance between the exchanges, the day and time of the message and the degree of operator assistance.

Adopt the following ~~new~~ definition in alphabetical order:

“Regulated rates” means single line flat-rated residential and business service rates billed to customers pursuant to Iowa Code section 476.1D(1) as amended by 2005 Iowa Acts, chapter 9, section 1.

Rescind the following definitions: “ancillary service or equipment”; “basic local service”; “charges”; “existing inside station wiring”; “flat rate service”; “grade of service”; “multipart service”; “new inside station wiring”; “official company station equipment”; “other supplier”; “toll station”; “toll station service”; “transition date” and “transmission service.”

ITEM 3. Amend subrule **22.1(4)** by rescinding the following abbreviations:

AMA – Automatic Message Accounting
ANC – All Number Calling
ANI – Automatic Number Identification
CAMA – Centralized Automatic Message Accounting
CATV – Community Antenna Television
CB – Common Battery
CDO – Community Dial Office

COE – Central Office Equipment
DDD – Direct Distance Dialing
D-TPL – Dial Terminal Per Line
D-TPS – Dial Terminal Per Station
IMTS – Improved Mobile Telephone Service
INWATS – Inward Wide Area Telephone Service
MG – Magneto
MMM – Message Minute Miles
NFPA – National Fire Protection Association
PABX – Private Automatic Branch Exchange
SLU – Subscriber Line Usage
TSP – Traffic Service Position
TSPS – Traffic Service Position System
TWX – Teletypewriter Exchange Service
WATS – Outward Wide Area Telephone Service

ITEM 4. Rescind and reserve subrule **22.1(6)**.

ITEM 5. Amend subrule 22.2(3) as follows:

22.2(3) Tariffs to be filed with the board. The utility shall file its tariff with the board, and shall maintain such tariff filing in a current status. A copy of the same tariff shall also be on file in all business offices of the telephone utility and shall be available for inspection by the public.

The schedules of ~~rates of rate regulated rates and alternative operator services rates utilities and rules of all utilities~~ shall be filed with the board and shall be classified, designated, arranged, and submitted so as to conform to the requirements of current tariff or rate schedule circulars and special instructions which have been or may from time to time be issued by the board. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules unless otherwise provided in rule 22.14(476).

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476, shall not be required to file schedules of rates, ~~or contracts primarily concerned with a rate schedule, with the board but nothing.~~ *Nothing* contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board's duties upon request to do so by the board. *Every telephone utility shall make the schedule of its rates readily available to customers on the utility's Web site, if the utility has one, or by mail, upon request.*

ITEM 6. Amend subrule **22.2(5)** as follows:

Amend paragraphs “a,” “b,” “f,” “m,” and “s” as follows:

a. A table of contents containing a list of ~~exchange rate schedules regulated rates or alternative operator services rates~~ and other sections in the order in which they appear showing the sheet number of the first page of each rate schedule or other section. In the event the utility filing the tariff elects to segregate a section such as general rules from the section containing ~~the rate schedules regulated rates, alternative operator services rates, or other sections,~~ it may at its option prepare a separate table of contents or index for each such segregated section.

b. All *regulated rates and alternative operator services rates shall be included in tariffs. of rate regulated utilities for service defining the classes and grades of service that are available to the customers and to which each rate applies as well as the rate to be charged to the customer for directory assistance calls in excess of the limit established by the board under which no charge shall be assessed. With these rate schedules, Local exchange utilities shall file a map shall be*

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filed which shall clearly define the base rate boundary and any rural or special zones that are set forth in the tariff. The boundary line location on such maps shall be delineated from fixed reference points.

f. ~~The list of exchange areas served, and the standard rates associated therewith, where rate control is authorized by law, shall be filed in such form as to facilitate ready determination of the rates available. If the utility has mileage extension charges, the areas where mileage rates apply shall be indicated.~~

m. Rules covering temporary, emergency, auxiliary and standby service.

s. A general explanation of each regulated service and equipment offering available from the utility.

Rescind and reserve paragraphs "p," "t," "u," and "v."

ITEM 7. Amend subrule 22.2(6) as follows:

22.2(6) ~~Annual, periodic and other reports~~ *Information* to be filed with the board.

a. ~~Exchange area boundary maps. The utility shall file annually a verification that it has a currently correct set of exchange area boundary maps on file with the board in accordance with 22.20(3).~~

b. ~~The utility shall file annually a report of all important additions to the telephone plant by exchange or location, the construction or acquisition of which was completed by the utility during the preceding year and that which is planned for the current year. For the purpose of this rule an important addition to plant shall mean a single project involving the expenditure of more than \$50,000 or an amount equivalent to more than 25 percent of the total telephone plant in service, whichever is less.~~

c. ~~Each utility shall compile a monthly record by exchange central office, and outside trouble reports and held orders. Each call or written statement received shall be considered a separate report, even though it may duplicate a previous report or merely involve an inquiry concerning progress on a previous report. This information shall be supplied on forms approved by the board. The records shall be compiled not later than 30 days after the end of the month covered and shall, upon and after compilation, be kept available for inspection by the board or its staff. A summary of the 12 monthly records shall be attached to and submitted with the utility's annual report to the board.~~

d. ~~The utility shall keep the board informed currently by written notice as to the location at which the utility keeps the various classes of records required by these rules.~~

e. ~~A copy of each standard type of customer bill form in current use shall be filed with the board.~~

f a. ~~The~~ *Each utility shall file with the board the name, title, address and telephone number of the person who is authorized to receive, act upon and respond to communications from the board in connection with the following:*

- (1) General management duties.
- (2) Customer relations (complaints).
- (3) Engineering operations.
- (4) Emergencies during nonoffice hours.

g b. ~~A copy of a new directory being distributed to customers.~~

h. ~~A copy of any application for waiver, modification or clarification (however denominated) the utility files with the Federal Communications Commission with respect to its decision in Docket No. 20828.~~

i. ~~Any index or list which comprehensively catalogs or cross-references tariffed offerings for internal management or sales purposes.~~

ITEM 8. Amend subrule 22.3(1) as follows:

22.3(1) Directories. All directories published after the effective date of these rules shall conform to the following:

a. Telephone directories shall be published not less than annually, except for good cause shown, listing the name, address and telephone number of all customers unless otherwise requested by the customer. *A local exchange carrier serving an exchange may choose not to publish a telephone directory if the local exchange carrier makes arrangements for publication in a directory that is commonly available in the local exchange in question.*

b. Upon issuance, a copy of each directory shall be distributed *without charge* to all of the utility's customers locally served by that directory.

c. The year of issue *or effective dates* shall appear on the front cover and, if space permits, on the back binding. Information pertaining to emergency calls, such as for the police and fire departments, for each exchange listed in the directory shall appear conspicuously on the front side of the first page of the directory. The directory shall also show a summary of the names of listed exchanges with the name of each serving telephone utility next to the exchanges it serves.

d. to f. No change.

g. ~~Placed under the prominent heading "Customers' Rights To Own And Provide Their Own Telephones, Other Terminal Equipment And New Inside Station Wiring," each directory shall provide the following information:~~

(1) ~~A customer has the right to provide and own terminal equipment and new inside station wiring.~~

(2) ~~A customer is not required to buy or lease terminal equipment from the telephone utility in order to receive service.~~

(3) ~~A customer is not required to use the services of the telephone utility for the installation or repair of new inside station wiring, telephone utility cable within or between two or more buildings on the same premises, or terminal equipment. Upon request, the telephone utility will provide limited technical information for the services and facilities listed above.~~

(4) ~~The charges for transmission services, connections, disconnections or service checks shall not be preferential due to the fact that telephones, or other terminal equipment or new inside station wiring are provided by the telephone utility or other suppliers.~~

(5) ~~A definition of terminal equipment.~~

h g. When additions or changes in plant, records, or operations which will necessitate a large group of number changes are scheduled, reasonable notice shall be given to all customers so affected even though the additions or changes may be coincident with a directory issue.

i h. For any exchange in which an extended area call can terminate, the terminating exchange telephone utility shall provide all recently compiled directory listings, except listings for nonpublished or nonlisted customers, to the utility from which the extended area call originates. The telephone utility shall provide the directory listing without charge, within 30 days of receipt of a written request for those listings.

j i. In addition to the serving exchange directory listing required under 22.3(1)"a," upon the customer's request, an Iowa customer served by an out-of-state exchange shall be included in the directory list of one contiguous Iowa exchange of the customer's choice. Any charge for such Iowa listing shall be paid by the serving exchange.

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ITEM 9. Amend subrule 22.3(2) as follows:

22.3(2) ~~Grade of service~~ *Service check.* Upon the individual customer's request, each telephone utility shall perform a service checkup to the demarcation point, without charge to the customer.

a. ~~No utility shall connect more customers on any line than are contemplated under the grade of service charged the customer on such line.~~

b. ~~All residential subscriber telephone service shall be a grade of one- or two-party service. Not more than two residential parties shall be connected to any line.~~

Upon completion in the meeting of this requirement, a report to that effect shall be filed with the board.

c. ~~All business subscriber telephone service shall be a grade of one- or two-party service. Not more than two business parties shall be connected to any line within the base rate area. It shall also be the objective of telephone companies to ultimately provide one-party service to all business customers.~~

ITEM 10. Rescind and reserve subrules **22.3(3)**, **22.3(4)**, **22.3(8)**, **22.3(9)** and **22.3(13)**.

ITEM 11. Amend subrule 22.4(1) as follows:

22.4(1) Customer information.

a. Each utility shall:

(1) Maintain up-to-date maps, plans, or records of its entire exchange systems, together with such other information as may be needed to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving prospective customers in its service territory. Maps shall show the physical location of central offices, all telephone lines showing size of cable, and other facilities in the utility's service territories. The maps shall include, at a minimum, service locations, any zones or corporate limits, which affect tariffed rates, roads, and county boundaries, and shall show county names. These maps shall be available for board examination at a location within Iowa during regular office hours and will be provided to the board upon request. These are not the same maps as the boundary maps described in subrule 22.20(3).

(2) Whenever a residential customer or prospective residential customer requests ~~transmission service~~ *local exchange service from a utility*, the local exchange utility shall ask the residential customer or prospective residential customer if ~~and the customer desires~~ *indicates a desire* to be informed of the lowest priced service alternatives available for *local exchange service*, and upon an affirmative response the utility shall inform that customer of the lowest priced single and multiparty service alternative available from that utility, based only on monthly recurring rates for flat-rated services, at the relevant location.

(3) Prior to processing a request for new inside station wiring or new or additional terminal equipment, inform the requesting party of all of the following information: the customer's right to provide and own terminal equipment and new inside station wiring, the availability of information on new inside station wiring and the rate for transmission service and all other rates or charges that will be incurred after processing the request, both initially and on a continuing basis. The telephone utility shall also inform the party that the rate for transmission service is the same whether or not terminal equipment is provided by the customer.

(4) ~~3)~~ Notify customers affected by a change in *regulated* rates or schedule classification.

(5) Post notices in a conspicuous place in each office of the utility where applications for service are received,

informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the board, are available for inspection and that customers have the right to own their own terminal equipment and that this will not affect the rate for transmission service.

(6) ~~4)~~ Furnish such additional information as the customer may reasonably request.

b. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

All local exchange telephone utilities, and other telephone utilities that do their own billing, shall notify their customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, the service may be subject to state regulation. you You may request assistance from the Iowa Utilities Division Board, 350 Maple Street, Des Moines, Iowa 50319-0069, (515)281-3839 or toll-free (877)565-4450 or E-mail iubcustomer@iub.state.iowa.us."

The bill insert or notice for nonrate-regulated telephone utilities shall also include the following statement: "If (utility name) does not resolve your complaint, the service may be subject to state regulation. You may contact the Utilities Division, Department of Commerce, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll free (877)565-4450."

The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A telephone utility which provides local exchange service and issues an annual directory shall publish the information set forth above in its directory in addition to a mailing.

ITEM 12. Amend subrule **22.4(2)**, introductory paragraph and paragraphs "a," "b," and "h," as follows:

22.4(2) Customer deposits. Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service. No deposit shall be required as a condition for service other than determined by application of either credit rating or deposit calculation criteria, or both, of the filed tariff. The deposit required shall be confirmed in writing to the customer not later than the time of the next billing. The confirmation shall, in separate columns, itemize deposits for toll and regulated services *local exchange service* and identify deposits for other *unregulated* services. The confirmation shall state that no deposit other than for regulated *local exchange* service is required to obtain basic *local exchange* service. The confirmation must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)"b"(4). Toll service does not include information service not regulated by the board.

a. Such deposit *Deposits for local exchange service* shall not be more in amount than the maximum charge for two months of local exchange service plus two months regulated toll service estimated from either past toll usage or customer estimated anticipated usage or exchange average toll usage for the same class and grade of service, or as may reasonably be required by the utility in cases involving service for short

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periods of time or special occasions. The deposit amounts must also reflect the limits as to low-income customers in 199—subparagraph 39.3(2)“b”(4).

b. Interest on customer deposits. Interest shall be paid by the rate-regulated utility to each customer required to make a deposit on deposits associated with regulated rates. ~~On or after April 21, 1994, rate regulated utilities shall compute interest on customer deposits~~ *Interest on such deposits shall be computed at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question.* Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent, relative to an account treated as an uncollectible account, is the most recent date the account became delinquent.

h. A new or additional deposit for local exchange service may be required to cover the amount provided in “a” above when a deposit has been refunded or is found to be inadequate by virtue of increased toll or nonpayment ~~the customer's payment history demonstrates a deposit is or continues to be appropriate.~~ Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. The new or additional deposit shall be payable at any of the utility's business offices or local authorized agents. An appropriate receipt shall be provided. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

If toll usage is abnormal, the tariff may provide for a new deposit or an increase in the deposit to guarantee payment of bill.

For customers with at least six consecutive months of service, abnormal usage of toll service is at least a 25 percent increase in monthly toll charges which amounts to at least \$20. To determine the increase, comparison shall be to the customer's average monthly toll during not less than the prior three months.

For customers with less than six consecutive months of service, abnormal usage of toll service is when one month's toll charges exceeds the deposit attributable to toll by at least 25 percent and this excess amounts to at least \$20.

In no instance will the utility demand a new or additional deposit in anticipation of increased toll usage.

i. A customer who fails to ~~comply with the~~ pay a new or additional deposit requirements for local exchange service may be disconnected under the provisions of the written notice and 22.4(5).

ITEM 13. Amend subparagraph 22.4(3)“c”(4) as follows:

(4) Each disconnection notice shall state that access to regulated local exchange service shall not be denied for failure to pay for information service charges, or for deregulated toll charges services.

ITEM 14. Amend paragraph 22.4(3)“d” as follows:

d. Late payment charges by rate-regulated utilities for services associated with regulated rates. Where net and gross amounts are billed to customers, the difference between net and gross is a late payment charge and is valid only when it is part of a delinquent bill payment. A late payment charge shall not exceed 1.5 percent per month of the past-due

amount. No collection fee may be levied in addition to this late payment charge. This does not prohibit cost-justified charges for disconnection and reconnection of service.

ITEM 15. Amend paragraph 22.4(3)“i” as follows:

1. Overcharges. The time period for which the utility is required to refund or credit the customer's bill shall not exceed five years unless otherwise ordered by the board. Refunds of \$25 or more shall be in the form of checks to current customers. Checks are to be issued to former customers where the refund exceeds \$10. Refunds to current customers of less than \$25 may be in the form of a bill credit. Refunds for regulated services local exchange service may not be applied to unpaid amounts for unregulated services.

ITEM 16. Amend subrule 22.4(6) as follows:

22.4(6) Medical emergency. ~~Notwithstanding any other provision of these rules, a telephone utility shall postpone the disconnection of service to a residential customer for a reasonable time, not in excess of 30 days, if the customer produces verification from a physician, or a public health or social services official, which states that telephone service is essential due to an existing medical emergency of the customer, a member of the customer's family or any permanent resident of the premises where service is rendered. This written verification shall identify the medical emergency and specify the circumstances. Initial verification may be by telephone if written verification is forwarded to the utility within five days. Disconnection of a residential customer shall be postponed 30 days if an existing medical emergency of the customer, a member of the customer's family, or any permanent resident of the premises where service is rendered would present an especial danger to the health of any permanent resident of the premises. Indicators of an especial danger to health include, but are not limited to: age; infirmity; mental incapacitation; serious illness; physical disability, including blindness and limited mobility; and any other factual circumstance which may indicate a severe or hazardous health situation. The telephone utility may require written verification of the especial danger to health by a physician or a public health official, including the name of the person endangered, and a statement that the person is a resident of the premises in question. Initial verification may be by telephone, but the telephone utility may require a written verification within 5 days of the verification of the especial health danger by the physician or a public health official, including the name of the person endangered and a statement that the person is a resident of the premises in question. If the service has been disconnected within 14 days prior to verification of illness for a qualifying resident, service shall be restored to that residence if a proper verification is thereafter made in accordance with the foregoing provisions. If the customer does not make payment during the 30-day period, the service is then subject to disconnection pursuant to subrule 22.4(5).~~

ITEM 17. Amend subrule 22.4(7), paragraphs “b” and “i,” as follows:

b. Failure to pay for terminal equipment, new inside station wiring or other merchandise purchased from the utility.
i. Failure to pay for deregulated toll charges services.

ITEM 18. Rescind and reserve subrule 22.5(13).

ITEM 19. Amend subrule 22.6(1) by adding new paragraph “c” as follows:

c. Ninety-nine percent of all customers provided service within 30 business days of the request or the customer-requested date, whichever is later. Compliance will be measured based on a three-month rolling average.

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ITEM 20. Amend subrule **22.6(2)**, paragraphs “a,” “c,” and “d,” as follows:

a. During such period of time as a local exchange utility using its facilities to provide service may not be able to supply primary telephone service to prospective customers within five business days after the date applicant desires service, the telephone utility shall keep a record, by exchanges, showing the name and address of each applicant for service, the date of application, the date that service was requested, and the class and grade of service applied for, together with the reason for the inability to provide new service to the applicant.

c. When the local exchange utility using its facilities to provide service fails to provide primary local exchange service to any customer requesting service within 15 business days, *it the local exchange utility shall provide the customer with an alternative form of service until primary local exchange service can be provided. The alternative form of service provided shall be that alternative that most closely equates to the capabilities of primary local exchange service wireless telephone service unless the customer agrees otherwise.*

d. If an alternative form of primary service is provided, the local exchange utility is authorized to charge the customer the *tariff regular* rates (if applicable) for the alternative *primary service ordered*, if such *tariff* rates are less than the *tariff regulated* rate for primary local exchange service. Otherwise, the customer will be charged the *tariff regulated* rate for primary local exchange service. Where an alternative form of service is impossible to provide, the facilities-based local exchange utility shall waive all usual installation charges and, once primary local exchange service is provided, shall credit the customer's account in an amount equal to the pro-rata monthly primary local exchange charge for each day service was not provided.

ITEM 21. Amend rule 199—22.10(476) as follows:

199—22.10(476) Standards of competition Unfair practices. In areas of telephone service where customer provision of terminal equipment or new inside station wiring is permissible or required, a telephone utility's practices and actions shall be fair.

22.10(1) In order to promote fair treatment of customers, the telephone utility shall observe the following practices:

a. A telephone utility shall inform, in writing, all employees who may handle customer complaints, requests for information and communication services or equipment items which may be provided by customers, of the provisions of 22.3(6), 22.3(13), 22.4(1)“a”(2), 22.9(476), and 22.11(476).

b. Telephone utility personnel shall provide applicable rates and charges or any other information contained in the utility tariff, to answer inquiries as to the absence or presence of telephone utility equipment or services at a specified location, and to provide specifications which will permit customer-provided terminal equipment and new inside station wiring to gain access to the telephone network.

c. Upon the individual customer's request, each telephone utility shall perform a service check up to the demarcation point, without charge to the customer, and all costs for the service check up to the demarcation point will be assigned to the regulated services of the utility. However, as an exception, if the customer requests that the utility locate or repair any difficulty on the customer's side of the demarcation point, all costs and charges, if any, associated with the service on both the customer's side and the utility's side of

the demarcation point will be assigned to the deregulated services of the utility.

22.10(2) All unfair or deceptive practices related to customer provision of equipment are prohibited. Any failure to provide information to customers or to deal with customers who provide their own terminal equipment or new inside station wiring or an alteration of the charges for or availability of equipment or services on that ground, unless specifically authorized by board order or rule and by the utility's tariff, shall constitute unfair or deceptive practices. In cases of equipment in compliance with ~~federal communications commission~~ *Federal Communications Commission* registration requirements, telephone utility personnel are prohibited from making any statement, express or implied, to, or which will reach, a customer or prospective customer that terminal equipment in compliance with Federal Communications Commission registration requirements cannot properly be attached to the telephone network. This does not apply to good-faith efforts to amend the Federal Communications Commission requirements.

The listing of unfair practices in this rule shall not limit the types of acts which may be found to be unfair nor shall those listed be used to establish decisional criteria operating to exempt any act otherwise unfair from the intent of this rule.

ITEM 22. Amend rule 199—22.11(476) as follows:

199—22.11(476) Existing and new inside Inside station wiring standards.

22.11(1) Treatment of existing and new inside station wiring-

a.—On and after the transition date, all telephone utilities shall, if new inside station wiring is offered, provide, sell or lease the new inside station wiring as nonutility functions. The repair and maintenance of existing and new inside station wiring shall be nonutility functions on and after the transition date. No telephone utility shall on and after the transition date be required to provide, sell, lease, install, maintain or repair new inside station wiring or maintain or repair existing inside station wiring. The costs and revenues associated therewith shall not be included in a telephone utility's revenue requirement for ratemaking purposes.

b.—Each telephone utility shall be responsible for making all connections at the protector or providing a facility to permit connection with new inside station wiring at the demarcation point. Nothing contained in these rules shall require or necessitate changes or modifications to telephone utility connections with existing inside station wiring.

c.—Each telephone utility shall maintain its accounting records to separately account for those costs and revenues associated with utility functions and those costs and revenues associated with nonutility functions. Identifiable costs and associated overheads will be directly assigned; common and joint costs will be allocated on a consistent basis between utility and nonutility functions. Each telephone utility shall have the burden of proof to establish that directly assigned and allocated costs are recorded in the appropriate accounts.

d.—Each telephone utility shall within 120 days after the effective date of these rules file a revised tariff which provides the utility will not be responsible for providing, repairing and maintaining new inside station wiring and repairing and maintaining existing inside station wiring.

22.11(2) Suppliers. New inside station wiring may be secured from a telephone utility if new inside station wiring is offered, or from any other supplier. Repair or maintenance for existing or new inside station wiring may be secured from

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a telephone utility, if repair or maintenance is offered, or from any other supplier.

~~22.11(3) Amortization of existing inside station wiring. Complete expensing of subaccounts 233:1 and 233:2 shall be accomplished through use of an amortization period commencing from the effective date of these rules. The amortization period shall be the depreciation period established in the last rate proceeding completed prior to January 1, 1982, for each telephone utility, or ten years, whichever is less.~~

Existing inside station wiring, upon expiration of the amortization period for the respective subaccounts, shall be excluded from the utility's regulated books of account. No telephone utility shall be permitted to sell existing inside station wiring during the amortization period for the respective subaccounts, or at any time thereafter. No telephone utility shall be permitted to lease existing inside station wiring after the expiration of the amortization period.

~~22.11(4) Amortization of existing telephone utility cable within or between two or more buildings on the same premises. That portion of existing outside plant which represents the undepreciated investment of the utility in telephone utility cable within or between two or more buildings on the same premises shall be amortized over the remaining life of the amortization period established by subrule 22.11(3), commencing from the effective date of these rules. Each telephone utility shall transfer the dollar amount which is to be amortized from the outside plant account 242.1 to the inside station wiring account 233 on the utility's transition date. Existing users of telephone utility cable within or between two or more buildings on the same premises on the transition date shall not be denied use in the future equal to their use on the transition date, unless that user requests a decrease in service after the transition date. Existing telephone utility cable within or between buildings on the same premises, upon expiration of the amortization period for the respective subaccounts, shall be excluded from the utility's regulated books of account.~~

22.11(5 I) Construction by user limitation. A user shall not be allowed to construct inside station wiring from a demarcation point or between two or more buildings on the same premises to obtain service from an exchange other than that by which ~~they~~ *the user* would normally be served, excluding users being provided adjacent exchange service or foreign exchange service as provided in a company's tariff. Existing inside wiring obtaining local exchange service within another exchange boundary shall be disconnected by the user within ten days after receipt of written notification from the local exchange company.

22.11(6 2) Standards applicable to existing and new inside station wiring. The following technical standards must be complied with:

a. Intrasystem wiring in customer-provided PBX and key telephone systems shall be in compliance with applicable *Applicable* registration standards promulgated by the Federal Communications Commission.

b. For use with telephone transmission service where only nonbutton or single button telephone stations and associated ancillary devices are utilized, new inside station wiring shall be in compliance with 47 CFR Part 68.

c. All existing and new inside station wiring must comply with applicable *Applicable* national, state or local building and electrical codes, including, National Electrical Code, as defined in NFPA No. 70-978 (Article 800, Communications Circuits 199—subrule 25.2(5); and accepted good engineering practice in the communication industry to ensure, as far as reasonably possible, continuity of service, uniformity

in the quality of service furnished, and safety of persons and property.

~~d. Telephone utilities shall generally endeavor to answer any questions concerning the installation, repair, and maintenance of new inside station wiring and the repair and maintenance of existing inside station wiring. Upon request, telephone utilities shall distribute to their customers or other interested parties, explanatory printed materials on new inside station wiring, including an explanation of how compliance with the above standards can be accomplished.~~

ITEM 23. Amend subrule 22.12(1) as follows:

22.12(1) Construction of rule. This rule shall be construed in a manner consistent with its purpose to expedite informed consideration of tariff filings proposing rates by ~~assuring~~ *ensuring* the availability of relevant information on a standardized basis. Unless a waiver is granted prior to filing, this rule shall apply to all tariff filings by rate-regulated telephone utilities proposing rates, except the following:

a. ~~Tariff filings of interexchange carriers not providing basic local service proposing new or changed intraLATA rates certified by an officer or employee with personal knowledge to be the same as the rates charged for the same deregulated services in the competitive interLATA market. These intraLATA tariff filings shall not be subject to the 20-day objection or request for docketing period in subrule 7.4(4) and shall be approved and made effective, subject to investigation or complaint, on an expedited basis by the board upon filing.~~

b. ~~Tariff~~ *tariff* filings of AOS utilities that propose rates at or below the corresponding rates for similar services of utilities whose rates have been approved by the board in a rate case or set in a market determined by the board to be competitive.

ITEM 24. Amend subrule 22.13(1) as follows:

22.13(1) Construction of rule. This rule shall be construed in a manner consistent with its purpose to provide information on costs of supplying specific telephone services and on the relative contributions of general telephone service offerings to the rates of return to the telephone utilities. Unless a waiver is granted prior to filing, this rule shall require periodic fully distributed cost (FDC) studies to be prepared and submitted to the board and shall require individual tariff filings to be supported by cost studies except the following: .

a. ~~Tariff filings of interexchange carriers not providing basic local service proposing new or changed intraLATA rates certified by an officer or employee with personal knowledge to be the same as the rates charged for the same deregulated services in the competitive interLATA market. These intraLATA tariff filings shall not be subject to the 20-day objection or request for docketing period in subrule 7.4(4) and shall be approved and made effective, subject to investigation or complaint, on an expedited basis by the board upon filing.~~

b. ~~Tariff~~ filings of AOS utilities that propose rates at or below the corresponding rates for similar services of utilities whose rates have been approved by the board in a rate case or set in a market determined by the board to be competitive.

ITEM 25. Amend rule 199—22.21(476) as follows:

199—22.21(476) Toll dialing patterns. All local exchange utilities may, and after June 19, 1994, shall use the dialing pattern, 0 or 1 plus ten digits, for all toll calls either within a single numbering plan area or from one numbering plan area to another.

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ITEM 26. Amend subrule 22.23(2), introductory paragraph, as follows:

22.23(2) Prohibition of unauthorized changes in telecommunications service. *Unauthorized changes in telecommunications service, including but not limited to cramming and slamming, are prohibited.*

ITEM 27. Adopt **new** subparagraph **22.23(2)“a”(5)** as follows:

(5) For other changes in service resulting in additional charges to existing accounts only, a service provider shall establish a valid customer request for the change in service through maintenance of sufficient internal records. At a minimum, any such internal records must include the date

and time of the customer's request and adequate verification under the circumstances of the identification of the person requesting the change in service. Any of the three verification methods in 22.23(2)“a”(1) to (3) will also be acceptable. The burden will be on the telecommunications carrier to show that its internal records are adequate to verify the customer's request for the change in service.

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